

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

In re: )  
)  
JESSE C. TRENTADUE, )  
)  
Plaintiff, )  
)  
vs. ) Case No. 2:08-CV-00788  
)  
UNITED STATES CENTRAL )  
INTELLIGENCE AGENCY, )  
FEDERAL BUREAU OF )  
INVESTIGATION, et al., )  
)  
Defendants. )  
)  
\_\_\_\_\_ )

BEFORE THE HONORABLE CLARK WADDOUPS

July 28, 2014

Transcript of Bench Trial

Laura W. Robinson, RPR, FCRR, CSR, CP  
351 South West Temple  
8.430 U.S. Courthouse  
Salt Lake City, Utah 84101  
(801)328-4800

**Appearances of Counsel:**

For the Plaintiff:                   Jesse C. Trentadue  
  Attorney at Law  
  Switter Axland  
  8 E. Broadway  
  Suite 200  
  Salt Lake City, Utah 84111

For the Defendant:                   Kathryn L. Wyer  
  Adam C. Siple  
  Attorneys at Law  
  US Department of Justice  
  Civil Division-Federal Programs  
  Branch  
  20 Massachusetts Ave NW Rm 7124  
  Washington, D.C. 20530

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**Salt Lake City, Utah, July 28, 2014**

\* \* \* \* \*

THE COURT: Good morning. We're here in the matter of Trentadue versus the FBI, case 2:08-CV-788. Will counsel please state their appearance.

MR. TRENTADUE: Jesse Trentadue, Your Honor, pro se.

THE COURT: Thank you.

MS. WYER: Kathryn Wyer, Your Honor, for the FBI.

MR. SIPLE: Adam Siple, Your Honor, for the FBI.

THE COURT: And we're here for the trial. Any preliminary matters we need to address before we proceed with opening statements?

MR. TRENTADUE: No, sir.

THE COURT: Ms. Wyer, anything from the FBI?

MS. WYER: No, Your Honor.

THE COURT: Do you wish to -- the FBI, as we agreed in the pretrial order, is going to proceed initially to present its case, and then the plaintiff will be allowed to put on his responsive case.

Do you wish to make an opening statement?

MS. WYER: Yes, Your Honor.

THE COURT: You may proceed.

MS. WYER: Good morning, Your Honor, may it please the court. At issue in this case is the reasonableness of FBI search for videotapes responsive to the plaintiff's request

1 under the Freedom of Information Act or FOIA. There are  
2 essentially two tapes or I should say alleged tapes at issue  
3 here. One, a tape from the dashboard camera of Trooper  
4 Charlie Hanger's patrol car of the Oklahoma Highway Patrol  
5 who arrested Timothy McVeigh on April 19th, 1995, the day of  
6 the Oklahoma City bombing. And two, an alleged tape that  
7 shows the Ryder Truck detonation from that bombing three  
8 minutes and six seconds after the suspect exited the truck.

9 In this trial, the FBI will put on witnesses to  
10 convince Your Honor that the FBI did conduct a reasonable  
11 search by using the search methods of searching the  
12 locations that would be likely to find those tapes if they  
13 existed.

14 The first witness that the FBI will call is Monica  
15 Mitchell from the FBI's office that handles FOIA requests.  
16 Ms. Mitchell is the one that coordinated the FBI's response  
17 to the plaintiff's request. Your Honor will hear from  
18 Ms. Mitchell about the FBI's Central Record System and the  
19 Automated Case Support System or the ACS which provides  
20 tools for electronic searches of that record system.

21 Ms. Mitchell will explain that an ACS search for any  
22 records related to the Oklahoma City bombing investigation  
23 which the FBI refers to as OKBOMB, O-K-B-O-M-B, pointed in  
24 one direction, the Oklahoma OKBOMB case file housed in a  
25 warehouse in Oklahoma City. Ms. Mitchell will also explain

1 why the FBI at that point sent the request to the field  
2 office in Oklahoma City to conduct a further search.

3 Your Honor will also hear from Ms. Mitchell that the  
4 FBI sent plaintiff the Hanger tape, the first tape that I  
5 mentioned that was found during the search, along with 29  
6 other videotapes including one tape that showed the Ryder  
7 Truck which was the only tape showing the Ryder Truck in the  
8 vicinity of the Murrah Building on the morning of April 19,  
9 1995 that was found.

10 The FBI will then call Linda Vernon, the Oklahoma City  
11 Field Office employee who did the search that found all 30  
12 videotapes that the plaintiff ended up getting. Ms. Vernon  
13 will explain that she was the FBI's discovery coordinator  
14 during the OKBOMB prosecution, and because of that she has  
15 particular search tools available to her that allowed her to  
16 conduct a thorough and accurate search.

17 Ms. Vernon will testify that with those tools, every  
18 videotape that the FBI collected during the OKBOMB  
19 investigation are -- is known and accounted for and that if  
20 a tape matching the description that the plaintiff provided  
21 did in fact exist, it would have been found through the  
22 searches that she did.

23 Your Honor will hear from these first two witnesses  
24 that all of the records that the FBI has ever found in  
25 regard to the plaintiff's FOIA requests were found through

1 the search that Ms. Vernon did. The plaintiff has refused  
2 to accept that the 30 tapes he got are the only tapes. Your  
3 Honor will hear evidence from additional witnesses that any  
4 other methods or locations for further searches would be  
5 fruitless.

6 The FBI's third witness will be Diane Lang, an  
7 evidence technician in the FBI's Oklahoma City Field Office.  
8 Ms. Lang will describe a separate search that she has in  
9 fact already done of the evidence side of the OKBOMB  
10 warehouse which is the place where videotape evidence would  
11 be stored. Your Honor will hear from Ms. Lang that she  
12 spent over two weeks, two full weeks on that search, but she  
13 failed to find a single tape responsive to the plaintiff's  
14 FOIA request that Ms. Vernon had not already found.  
15 Ms. Lang is also the one that located FBI documentation  
16 confirming that the original Hanger tape was returned to the  
17 Oklahoma Highway Patrol in 2006 before the plaintiff's FOIA  
18 request was submitted.

19 The FBI will then call Dorris Reed who also works for  
20 the FBI at the Oklahoma City Field Office. Ms. Reed will  
21 explain that she is the go to person when it comes to the  
22 OKBOMB paper file which is also stored in the warehouse in  
23 the separate side, separate from the evidence. Your Honor  
24 will hear from Ms. Reed that when she wants to find  
25 particular records in the paper file, she goes to ACS and



1 that because the paper file is so massive, it would not make  
2 sense to go out to the warehouse and just start looking cold  
3 through paper files manually.

4 The FBI's next witness will be Michael Morgan who  
5 provides IT support for the Oklahoma City Field Office.  
6 Mr. Morgan will explain why any search of shared network  
7 drives on the field office computer network which were  
8 formally I-Drives and now called S-Drives would not be  
9 likely to locate additional records or tapes. Your Honor  
10 will hear testimony from Mr. Morgan that the field office  
11 shared drives were already searched for all OKBOMB material  
12 back in 2001.

13 The FBI will then call Karen Thiessen, Unit Chief of  
14 the FBI Crime Labs Evidence Control Unit and Special Agent  
15 Mark Whitworth Unit Chief of the Explosives Unit of the  
16 Crime Lab. These witnesses will explain why it is extremely  
17 unlikely that any OKBOMB material, including videotapes,  
18 would be at the crime lab and that the searches that they  
19 did found nothing. The evidence will show that the FBI  
20 conducted a reasonable search. It will show that there are  
21 no other methods that could reasonably be used to identify  
22 any additional responsive records or videotapes and if the  
23 tapes that plaintiff has described were in the FBI's  
24 possession, they would have been found through the searches  
25 that were done and they would have been in the OKBOMB

1 warehouse which is the place that was repeatedly searched  
2 for this case. We therefore ask the court to enter judgment  
3 in favor of the FBI.

4 THE COURT: Thank you. Mr. Trentadue, do you may wish  
5 to make an opening statement?

6 MR. TRENTADUE: No, sir.

7 THE COURT: The FBI may proceed by calling its first  
8 witness. Is there a request to exclude witnesses?

9 MR. TRENTADUE: No, sir.

10 THE COURT: Okay. Then the witnesses may remain in  
11 the courtroom.

12 MS. WYER: The FBI first calls Monica Mitchell.

13 THE COURT: If you would come to the stand to be  
14 sworn, please.

15 THE CLERK: Please raise your right hand.

16 **MONICA MITCHELL,**

17 called as a witness at the request of the FBI,

18 having been first duly sworn, was examined

19 and testified as follows:

20 THE WITNESS: Yes.

21 THE CLERK: Please state and spell your full name for  
22 the record.

23 THE WITNESS: Monica, M-O-N-I-C-A, Marie, M-A-R-I-E,  
24 Mitchell, M-I-T-C-H-E-L-L.

25 //

**DIRECT EXAMINATION**

BY MS. WYER:

Q. Good morning, Ms. Mitchell.

A. Good morning.

Q. Ms. Mitchell, could you explain to the court where you work?

A. I work for the FBI's Records Management Division -- the Records Information Dissemination Section.

Q. Can you explain what that office does?

A. That office responds to FOIA and privacy act requests that it receives.

Q. And what is -- what is your position in the office?

A. My current position in that office is in the litigation support unit. I am an expert government information specialist.

Q. How long have you been in that position?

A. I have been in that position since 2008.

Q. And did you have any previous experience in that office before you got that position?

A. Yes. I came in in 2006 in the work process unit as an analyst there. And then about a year later I was re-assigned to the FOIPA unit which processes FOIA requests, the records responsive to that.

Q. And could you just briefly explain what those two

1 units do, but what does the work process unit do?

2 A. The work process unit is the initial processing  
3 unit which is currently the title initial processing. They  
4 receive the requests, they review the request to determine  
5 one if it is a privacy act or FOIA request, and then they  
6 determine whether or not supporting information such as  
7 certification of authorization if it is a third-party  
8 request on an individual, um, they make sure that they have  
9 what is needed to consider the request perfected so that  
10 they can respond to it.

11 Q. And what does the FOIA unit do?

12 A. The FOIPA unit they review the material, they  
13 scope the material, and they process the material for the  
14 release of nonexempt information.

15 Q. Based on the background that you have that you  
16 described, are you familiar with how FOIA requests are  
17 handled by the FBI?

18 A. Yes.

19 Q. Do you know how many FOIA requests come into the  
20 FBI every year?

21 A. This year it is projected to be about 18,000.

22 Q. And can you explain to the court -- you already  
23 explained that about what happens initially that the work  
24 process unit does, could you continue explaining how the  
25 request is handled when that first comes in after what you

1 already described?

2 A. Sure. They -- after the triage, the initial  
3 triage, if you will, it has been done and they determine  
4 that it is a perfected request, they then begin searching  
5 for responsive material by using key terms in the FOIA  
6 request that has been provided.

7 Q. And how did they -- how -- what do they look to  
8 when trying to identify key terms that would be search  
9 terms?

10 A. The request itself, key terms that may be  
11 mentioned such as an individual's name, date of birth,  
12 organization, a date of event, just key terms that might be  
13 referenced in the request itself.

14 Q. And once they have identified those terms, where  
15 do they go to use those terms?

16 A. Once they have determined that they have enough  
17 information to do a search, they will go to the Central  
18 Records System which maintains its -- the universe of the  
19 FBI's records that it has acquired over the course of its  
20 day-to-day law enforcement responsibilities.

21 Q. So is the Central Records System the FBI's  
22 primary record system?

23 A. That is correct.

24 Q. And how do they actually -- what tools do they  
25 actually use to search that system?

1           A.    We use the Automated Case Index system which is  
2 the investigative tool mainly for law enforcement purposes,  
3 but we do use that tool to respond to FOIA and privacy act  
4 requests as well.

5           Q.    And are there other components, are there  
6 different components within this Automated Case Support  
7 system?

8           A.    There are three components, the Electronic Case  
9 File, the Universal Index, and the Investigative Case  
10 Management.

11          MS. WYER: Your Honor, we have prepared this  
12 demonstrative to show the structure of that system. This is  
13 marked -- we marked this as Defendant's Exhibit 248, it is a  
14 demonstrative.

15          Ms. Mitchell, could you look at what is marked in your  
16 binder as ACS diagram. Did you prepare that diagram?

17          A.    I did.

18          Q.    Does that represent the three different  
19 components that you referenced of ACS?

20          A.    It does.

21          Q.    And so your office -- does your office focus on a  
22 particular one of those?

23          A.    We focus on the Universal Index to do searches.

24          Q.    And why is that?

25          A.    Because that is searching the general indices to

1 the FBI's record system.

2 Q. And does your office also go out and contact the  
3 agents who worked on an investigation to ask if they know of  
4 any records or where records might be generally?

5 A. No. Normally we wouldn't do that because of  
6 resources. I mean, as I mentioned, we receive approximately  
7 18,000 FOIA requests in a year. If we were to go out to  
8 case agents assigned to specific cases, it would be very  
9 burdensome. And in addition, it is possible that the agents  
10 may have been retired.

11 Q. Would you expect any records to be locatable  
12 through the electronic search as opposed to going to case  
13 agents?

14 A. Well, as I mentioned, the Universal Index  
15 searches the general indices which is again the collective  
16 universe of the records. So I would -- we use -- the policy  
17 is to use UNI which is the Universal Index for all searching  
18 for FOIA and privacy act requests.

19 Q. Now, what kind of results will be identified  
20 through a UNI search?

21 A. A UNI search will use key terms to search. As I  
22 mentioned, maybe a subject's name or event or organization.  
23 And you enter those terms and if there are records, you will  
24 receive a potential hit list.

25 Q. And does that list identify the location of the

1 records?

2 A. Every file has the file classification and the  
3 field office. So let's say headquarters would be HQ,  
4 Oklahoma City would be OC, so it would indicate which field  
5 that file was from.

6 Q. And what would happen next?

7 A. Once we do the search and we receive the  
8 potential responsive hits, then we would reach out for the  
9 files. If it is at headquarters, we would order those  
10 through the ordering process. If it is at the field and the  
11 files were located at the field, we would reach out to that  
12 field for the records and have them sent to Winchester to  
13 RIDS.

14 Q. And then what would happen?

15 A. Once we receive the files, the work process unit  
16 would receive the files and they would determine its  
17 responsiveness by reviewing the file or scoping the file.

18 Q. And then, um, the later processing is not an  
19 issue in this case so I don't want to spend a lot of time on  
20 it, but after, if responsive documents are found, then from  
21 what you said before it would go to the FOIA unit?

22 A. Right. If we found responsive material, we would  
23 send it through our document processing lab to pull that  
24 material from paper into an electronic version so that FOIA  
25 could then review the material and review it for releasable



1 information.

2 Q. Now, are you familiar with a FOIA request that  
3 the plaintiff in this case submitted to the FBI looking for  
4 videotapes and documents referencing the collection of those  
5 tapes?

6 A. I am.

7 Q. Could you look at Defendant's Exhibit 200. Let  
8 the record reflect that Defendant's Exhibit 200 has a  
9 heading Freedom of Information Act Request with letterhead  
10 from Jesse C. Trentadue. Do you recognize this document?

11 A. I do.

12 Q. And what is this?

13 A. This is the original request for records from  
14 Mr. Trentadue.

15 MS. WYER: Your Honor, the government moves to admit  
16 Exhibit 200.

17 MR. TRENTADUE: No objection, Your Honor.

18 THE COURT: Exhibit 200 is received.

19 (Whereupon, Defendant's Exhibit 200 was received  
20 into evidence.)

21 THE COURT: Do you intend to offer Exhibit 248?

22 MS. WYER: 248, the demonstrative? Yes, Your Honor,  
23 we think that would be helpful for the court.

24 THE COURT: Any objection, Mr. Trentadue?

25 MR. TRENTADUE: No, sir.

1 THE COURT: Exhibit 248 is also received.

2 (Whereupon, Defendant's Exhibit 248 was received  
3 into evidence.)

4 Q. (By Ms. Wyer) So what was your role in regard to  
5 this request?

6 A. Initially, I was not involved. When the initial  
7 request came in, um, it went to the initial processing unit  
8 which is also known or previously known as the work process  
9 unit. They handled the request because it was at the  
10 administrative stage.

11 Q. And then how did you become involved?

12 A. I became involved because Mr. Trentadue pretty  
13 quickly filed his current lawsuit involving the requests.

14 Q. And is that because you were in the litigation  
15 unit?

16 A. That is correct.

17 Q. And so did you become involved before -- at what  
18 point of the search process or the process that you were  
19 describing did you become involved?

20 A. I became involved after the initial search had  
21 been done.

22 Q. But are you aware of what the first step was that  
23 was done when the request came in?

24 A. I am, because once a case is in litigation, once  
25 it was assigned to me in the litigation support unit, it is

1 my role to confirm that the action taken was correct.

2 Q. So do you know whether a search occurred and what  
3 that search was?

4 A. Yes. The search of the UNI through ACS located  
5 one main file, the Oklahoma City OKBOMB file.

6 Q. And where was that file?

7 A. The file was located at the field in Oklahoma.

8 Q. And did you do that search yourself?

9 A. Initially, no. But once it reached litigation, I  
10 confirmed the search results and located the main file as  
11 well.

12 Q. What was the next step?

13 A. The next step during the litigation phase?

14 Q. Or I mean how was -- how did the processing of  
15 the request continue after that main file, the OKBOMB file,  
16 was identified?

17 A. At the administrative stage, once they located  
18 the main file the supervisor that supervised the search knew  
19 from institutional knowledge that the file was massive and  
20 in a warehouse in Oklahoma City. So she had the analyst  
21 that performed the initial search to e-mail our contact at  
22 the field.

23 Q. And what did -- what was the communication  
24 between your office and the field office?

25 A. Once I became involved because of the lawsuit I

1 coordinated with the field directly to confirm what material  
2 was responsive to the request and to have that material sent  
3 to me.

4 Q. Did your office actually ask the field office to  
5 conduct searches, further searches related to this request?

6 A. Right. We had sent a copy of the request  
7 detailing what we were searching for and asked for their  
8 assistance because they were most familiar with the file  
9 itself.

10 Q. So this is, from what you described before of the  
11 general process, is this different from what usually  
12 happens?

13 A. It is, because of the knowledge that we had with  
14 the size of the field, the size of the OKBOMB file, and the  
15 knowledge that we knew the field had and the tools they had  
16 in order to do additional searching to locate the evidence  
17 that was requested.

18 Q. Now, what, from your end, what was the next thing  
19 that your office was involved in regarding the plaintiff's  
20 FOIA request?

21 A. Once it became involved in litigation and I  
22 became involved, I coordinated with the field to determine  
23 what the search results were from the field in addition to  
24 the main file what was in the file was responsive and  
25 coordinated with Linda Vernon at the field for that.

1 Q. And who is Linda Vernon?

2 A. Linda Vernon is the accountant that had probably  
3 the most knowledge and still employed with the FBI. So we  
4 reached out to her for assistance.

5 Q. Did you receive results from her reflecting the  
6 search that she had done?

7 A. Yes. She e-mailed me an eight page spreadsheet  
8 of 244 videotapes and the supporting documents showing how  
9 the FBI became -- how the videotapes themselves were in the  
10 possession, how we received them.

11 Q. Could you look at what is marked as Defendant's  
12 Exhibit 211? Let the record reflect that Exhibit 211 is a  
13 chart. Ms. Mitchell, do you recognize this document?

14 A. Yes.

15 Q. And can you identify what that is?

16 A. This is the spreadsheet that Linda prepared and  
17 e-mailed to me.

18 Q. Now, did you also receive other materials from  
19 the field office?

20 A. Right. We received -- she had sent me the five  
21 boxes of videotapes that correspond to what is on the chart,  
22 in addition to roughly 200 pages of supporting documents  
23 302s, 192s.

24 Q. And you mentioned the number 244 videotapes. Are  
25 you the one that identified the actual number of videotapes

1 reflected in this chart?

2 A. That is correct.

3 Q. Now, in terms of your office providing a response  
4 to the plaintiff, what was the first thing that happened  
5 there?

6 A. Once it was in litigation and how we responded?

7 Q. Right. When you were actually trying to provide  
8 the plaintiff with documents or records responsive to his  
9 request, what was the first thing that happened there.

10 A. Well initially we located one of the tapes that  
11 he had requested was the Hanger tape. And because that was  
12 easier to access than the 243 other videotapes referenced on  
13 the chart, we had the field send us that Hanger tape so that  
14 we could release that more quickly.

15 Q. So is that the first video that the plaintiff  
16 received?

17 A. That is correct.

18 MS. WYER: Could you look at Defendant's Exhibit 201.  
19 And Your Honor, we move to admit Exhibit 211 into evidence.

20 THE COURT: Any objection?

21 MR. TRENTADUE: No, sir.

22 THE COURT: Exhibit 211 is received.

23 (Whereupon, Defendant's Exhibit 211 was received  
24 into evidence.)

25 Q. (By Ms. Wyer) Do you recognize the -- let the

1 record reflect that Exhibit 201 is a letter dated  
2 January 23rd, 2009, signed by David Hardy. Do you recognize  
3 this letter?

4 A. I do.

5 Q. And what is this?

6 A. This is the letter that I prepared enclosing the  
7 copy of the Hanger videotape released in its entirety.

8 Q. And you say released in its entirety, was that  
9 tape redacted or edited before it was released?

10 A. No. We had received a copy from the field and it  
11 was my understanding that there -- that the video didn't --

12 MR. TRENTADUE: Objection hearsay on this one, Your  
13 Honor, and foundation.

14 MS. WYER: Your Honor, she is explaining the basis for  
15 her own actions.

16 THE COURT: Well, I think she needs to lay additional  
17 foundation as to how she knew what she is about to testify  
18 to.

19 Q. (By Ms. Wyer) Well, can you continue explaining  
20 the basis for what you're talking about?

21 A. Well, I work under the supervision of the Office  
22 of General Counsel, FOIA Litigation, and I was on e-mails.  
23 I saw e-mails to and from the CDC at the field regarding the  
24 Hanger tape. And from the e-mails, I knew that the Hanger  
25 tape didn't warrant redactions. So therefore when I

1 received the copy of the Hanger tape, I presented it to the  
2 FOIA unit and asked them to make a copy using the media room  
3 that was in Winchester and I received the copy back and that  
4 is what this -- that is what was released with this letter.

5 Q. So when you gave the tape to be copied, did you  
6 ask them to make any redactions or do any edits to the tape?

7 A. No, because I was -- the e-mails that I had saw  
8 indicated that there was -- there was no reason for  
9 redaction because the video didn't show anything.

10 Q. And so did you ask them to make an exact  
11 duplicate of that tape?

12 A. That is correct.

13 Q. And is that the tape that you sent to the  
14 plaintiff?

15 A. That is right.

16 Q. Now after you got the charts, Exhibit 211, from  
17 Linda Vernon, what happened next in connection with the  
18 other response, the rest of the response?

19 A. After we made the Hanger release and review of  
20 the chart, we sent a letter to Mr. Trentadue indicating the  
21 search fees and the duplication fees associated with the 244  
22 tapes as well as the 200 pages of supporting documents  
23 responsive to his request.

24 MS. WYER: Your Honor, we move to admit Exhibit 201  
25 into evidence and would like now to look at Exhibit 202.



1 MR. TRENTADUE: No objection to 201, Your Honor.

2 THE COURT: Exhibit 201 is received.

3 (Whereupon, Defendant's Exhibit 201 was received  
4 into evidence.)

5 Q. (By Ms. Wyer) Let the record reflect that this  
6 is a letter from the FBI to Jesse Trentadue dated March 24,  
7 2009. Do you recognize this?

8 A. Yes. This is the letter that with assistance and  
9 supervision from FLU counsel we drafted regarding the search  
10 fees and duplication fees.

11 Q. And is it a standard practice to give a request  
12 or notice of fees before it going any further?

13 A. It is when the amount exceeds \$25.00.

14 Q. And do you -- is it also standard practice to  
15 request advanced payment of these?

16 A. In this case it exceeded \$250.00, it was several  
17 thousand dollars, and we asked for advanced payment.

18 Q. And is that in accord with the normal practice?

19 A. That is correct.

20 Q. And what -- did you receive a response from the  
21 plaintiff at that point?

22 A. We received a response back from Mr. Trentadue  
23 indicating that he would like to reduce the scope of his  
24 request and he listed out several, I believe 12, specific  
25 videos or coverage for 12 different locations that he

1 wanted.

2 MS. WYER: Your Honor, we move to admit Exhibit 202  
3 and we would now look at Exhibit 203.

4 MR. TRENTADUE: No objection, Your Honor.

5 THE COURT: Exhibit 202 is received.

6 (Whereupon, Defendant's Exhibit 202 was received  
7 into evidence.)

8 Q. (By Ms. Wyer) Let the record reflect that  
9 Exhibit 203 is a letter from Mr. Trentadue to myself dated  
10 April 13, 2009. Do you recognize this?

11 A. Yes.

12 Q. And what is this letter?

13 A. This is the letter that I was referring to where  
14 Mr. Trentadue indicated that he wanted video coverage for  
15 there is 11 numbered items, and then in the paragraph below  
16 the numbered items he references the Ryder Truck.

17 Q. So at that point did this letter become the  
18 operative request that you would act on?

19 A. That is correct.

20 Q. And so what happened after that?

21 A. After we received this letter, I again reached  
22 out to the field with assistance coordinating through Linda  
23 Vernon on the spreadsheet that she provided with the 244  
24 videotapes which tapes -- to help me narrow down which tapes  
25 would be responsive to this narrowed request.

1 Q. So did you ask Linda Vernon or the field office  
2 to assist again in identifying the records responsive to  
3 this request this FOIA request?

4 A. Yes. She had more knowledge than myself with the  
5 OKBOMB material and the evidence that was collected.

6 Q. And did you ask her specifically about any  
7 footage that might show a Ryder Truck?

8 A. Yes. While his request, the numbered items  
9 didn't include the Ryder Truck in the paragraph below it  
10 did, so I made sure in my e-mail to Linda that I pointed out  
11 that he again referenced this truck.

12 MS. WYER: Your Honor, we move to admit Exhibit 203.

13 MR. TRENTADUE: No objection, Your Honor.

14 THE COURT: Exhibit 203 is received.

15 (Whereupon, Defendant's Exhibit 203 was received  
16 into evidence.)

17 Q. (By Ms. Wyer) And we would like to look now at  
18 Exhibit 204. Ms. Mitchell, do you recognize what is marked  
19 as Defendant's Exhibit 204?

20 A. Yes.

21 Q. And could you -- let the record reflect this is a  
22 letter from the FBI to Mr. Trentadue dated April 23rd, 2009.  
23 Could you explain what this letter is?

24 A. This letter talks about his willingness to narrow  
25 the scope and that we had located 26 videotapes and the

1 costs associated with those. And we also noted that -- that  
2 the 200 pages of supporting documents and the costs  
3 associated with those.

4 Q. And are those the 200 pages that had been  
5 originally identified before the narrowing?

6 A. That is correct. We -- in Mr. Trentadue's  
7 narrowed request, he indicated that he wanted all 200 pages,  
8 he didn't want to narrow those pages.

9 MS. WYER: Your Honor, we move to admit Defendant's  
10 Exhibit 204.

11 MR. TRENTADUE: No objection, Your Honor.

12 THE COURT: Exhibit 204 is received.

13 (Whereupon, Defendant's Exhibit 204 was received  
14 into evidence.)

15 Q. (By Ms. Wyer) What happened after, at that  
16 point, after you had gotten the results from Linda Vernon on  
17 the narrowed request?

18 A. Once we had gotten the results, I went through  
19 the five boxes of 244 videotapes located those that were  
20 responsive to the narrowed request and took those VHS tapes  
21 to the FOIA unit for processing.

22 Q. And is there any document that indicates what  
23 happened during the processing?

24 A. The FOIA analyst as they were reviewing and  
25 processing the videotapes prepared kind of like a summary of

1 each tape that they processed.

2 Q. Could we look at Defendant's Exhibit Number 214.  
3 Let the record reflect that Exhibit 214 is a 27 page  
4 document that begins with a DVD number on the top and  
5 various information. Do you recognize this document,  
6 Ms. Mitchell?

7 A. Yes.

8 Q. Can you explain what this is?

9 A. These are the summaries. As the analyst, there  
10 were several analysts assigned to process. I believe three  
11 processed the VHS tapes, and the analyst indicates the  
12 number that is on the label for each of the VHS tapes and  
13 indicates the time and what the DVD consisted of.

14 Q. And does it indicate whether any redactions were  
15 made on the tapes?

16 A. It does.

17 Q. And were any redactions made on any of the tapes  
18 that were processed?

19 A. No.

20 MS. WYER: Your Honor, we move to admit Exhibit 214.

21 MR. TRENTADUE: No objection, Your Honor.

22 THE COURT: Exhibit 214 is received.

23 (Whereupon, Defendant's Exhibit 214 was received  
24 into evidence.)

25 Q. (By Ms. Wyer) Did you then release the tapes

1 that have been processed?

2 A. Yes. We did so in interim releases.

3 Q. Could we look at Defendant's Exhibit 206. Let  
4 the record reflect that Exhibit 206 is letter from the FBI  
5 to Mr. Trentadue dated June 23rd, 2009. Do you recognize  
6 what this document is, Ms. Mitchell?

7 A. Yes. This is the second release that we made to  
8 Mr. Trentadue, the first being the Hanger tape, and this is  
9 the second of video releases.

10 Q. And does this identify the buildings of the  
11 footage?

12 A. Yes. We released four videos from four  
13 locations, the Journal Record Building, the Oklahoma City  
14 Public Library, the U.S. Post Office and Southwest -- the  
15 Southwestern Bell.

16 Q. And a total of how many?

17 A. There were a total for this release --

18 Q. Is it identified in the document?

19 A. 22. Out from each one I indicate how many DVDs.

20 Q. And I think --

21 A. 23.

22 Q. 23.

23 A. Sorry, 23.

24 Q. And earlier you had mentioned the number 26.

25 Does that correspond exactly to the number of DVDs that the

1 plaintiff received? You said 26 videos were identified as  
2 responsive to the narrowed request?

3 A. No, because some of the footage on the VHS they  
4 were done in old VHS form and we put them in DVD form. So  
5 when we took the VHS, there was some -- there were a couple  
6 of the VHS tapes that the length exceeded the amount that  
7 could be put on one CD or one DVD.

8 Q. Do you know the total number of DVDs that the  
9 plaintiff ended up receiving?

10 A. We gave him 30.

11 Q. And is that including the Hanger tape?

12 A. That is including the Hanger tape.

13 MS. WYER: Your Honor, we move to admit Defendant's  
14 Exhibit 206.

15 MR. TRENTADUE: No objection, Your Honor.

16 THE COURT: Exhibit 206 is received.

17 (Whereupon, Defendant's Exhibit 206 was received  
18 into evidence.)

19 Q. (By Ms. Wyer) Can we now look at Defendant's  
20 Exhibit 207. Let the record reflect Exhibit 207 is a letter  
21 dated July 16, 2009, from the FBI to Mr. Trentadue. Do you  
22 recognize this document?

23 A. Yes. This is our third and final release to  
24 Mr. Trentadue and this enclosed six Regency Tower tapes.

25 MS. WYER: Your Honor, we move to admit Exhibit 207.

1 MR. TRENTADUE: No objection, Your Honor.

2 THE COURT: Exhibit 207 is received.

3 (Whereupon, Defendant's Exhibit 207 was received  
4 into evidence.)

5 Q. (By Ms. Wyer) Did you ultimately prepare a list  
6 of all of the tapes that were released?

7 A. Yes.

8 Q. Could we look at Exhibit 213. Ms. Mitchell, do  
9 you recognize Exhibit 213?

10 A. Yes. This is the chart that I prepared showing  
11 the description of each DVD that we processed and released  
12 and the number of videos associated with each location and  
13 then the evidence number that was actually on the spine from  
14 the label from each VHS.

15 Q. And what are attached -- are there -- is there  
16 anything attached to this?

17 A. The attachments are copies that I made showing  
18 the one the face of the copy of the Hanger tape that I  
19 received from the field, and then the other pages are the  
20 spine labels on the VHS tapes for the other locations.

21 Q. Did you prepare those scans?

22 A. I'm sorry?

23 Q. Are you the one that prepared these scans?

24 A. That is right.

25 Q. Going back to the first page of this document,



1 did you learn in regard to the Regency Tower release, did  
2 you later learn of any inaccuracy in the labeling of the  
3 tapes?

4 A. We did.

5 Q. Could you explain what that was?

6 A. On the Regency Tower on one of the tapes it was  
7 labeled 1B260/Q5 and later we determined that it should be  
8 1B1345 I believe, 1B1354, sorry.

9 Q. And are you looking at a page of the scans of  
10 those videos?

11 A. It is Bates number 56, D-00056. It shows the  
12 scan with my handwriting on the label indicating that I had  
13 checked about this footage.

14 Q. Did you check about that footage before the  
15 release was made?

16 A. I remember e-mailing Linda Vernon but I think it  
17 was after, after the footage had been released.

18 Q. Did you write this on the spine of the video  
19 before or after the release?

20 A. I don't remember honestly. Actually, it must  
21 have been during the processing for me to have written it,  
22 but again I am not certain.

23 MS. WYER: Your Honor, we move to admit Exhibit 213  
24 into evidence.

25 MR. TRENTADUE: No objection, Your Honor.

1 THE COURT: Exhibit 213 is received.

2 (Whereupon, Defendant's Exhibit 213 was received  
3 into evidence.)

4 Q. (By Ms. Wyrer) Other than tapes, was there also a  
5 release of records?

6 A. Right. We released the 200 pages of supporting  
7 documents.

8 Q. Were all of those released directly from the FBI?

9 A. Well, we referred 36 pages of the 200 pages to  
10 two different other -- to two other government agencies for  
11 a direct response to Mr. Trentadue.

12 Q. And which agencies were those?

13 A. One to FEMA and one to GSA.

14 Q. Could we look at Exhibit 205. Let the record  
15 reflect that Defendant's Exhibit 205 is a letter from the  
16 FBI to Mr. Trentadue dated May 28th, 2009. Do you recognize  
17 this document, Ms. Mitchell?

18 A. I do.

19 Q. Could you explain what this is?

20 A. This is the letter where we released the  
21 nonexempt information on 200 pages -- well, 164 pages of the  
22 200 pages reviewed and it notates that we sent material to  
23 OGA for a direct response to Mr. Trentadue.

24 Q. So 164 is 200 minus the 36 pages that you had  
25 mentioned?

1           A.    That is right.

2           Q.    And could we look at Plaintiff's Exhibit 34.  Let  
3 the record reflect that Plaintiff's Exhibit 34 has the same  
4 letter as the first page and then is followed by a number of  
5 other pages.  Is the material in Plaintiff's Exhibit 34, are  
6 those the 164 pages that were released at the time this  
7 letter was sent?

8           A.    They appear to be.  Do you want me to count them?

9           Q.    Well, you can look at the last page or the second  
10 to the last page?

11          A.    It shows 167 Bates number.

12          Q.    Now, is that because the letter at the beginning  
13 is Bates stamped?

14          A.    That is correct.  He Bates stamped the letter and  
15 our explanation of exemptions and our deleted page sheet  
16 showing the 36 pages that were not sent to him at that time.

17          Q.    Now, could we look at the last page of that  
18 document.  And did you at some point -- were you -- did you  
19 locate a complete copy of the last page of this document?

20          A.    Yes, during when we were reviewing plaintiffs  
21 exhibits, yes.

22          MS. WYER:  Defendant moves to admit Exhibit 205 and  
23 Plaintiff's Exhibit 34.

24          MR. TRENTADUE:  The motion is for 205 and 34?

25          MS. WYER:  Yes.

1 MR. TRENTADUE: No objection, Your Honor.

2 THE COURT: Exhibit 205 -- Defendant's Exhibit 205 is  
3 received. Plaintiff's Exhibit 34 is received.

4 (Whereupon, Defendant's Exhibit 205 and  
5 Plaintiff's Exhibit 34 were received into evidence.)

6 Q. (By Ms. Wyer) Now, could we now look at  
7 Exhibit 234. Let the record reflect that Defendant's  
8 Exhibit 234 has a file number at the top ending in D-10874.

9 Ms. Mitchell, do you recognize this?

10 A. Yes, it is the last page of the release.

11 MS. WYER: Defendant moves to admit Exhibit 234.

12 THE COURT: Any objection?

13 MR. TRENTADUE: No objection, Your Honor.

14 THE COURT: Defendant's Exhibit 234 is received.

15 (Whereupon, Defendant's Exhibit 234 was received  
16 into evidence.)

17 Q. (By Ms. Wyer) And did you receive a copy of the  
18 release that FEMA made in regard to the pages that have been  
19 referred to FEMA?

20 A. Yes.

21 Q. Can we look at Defendant's Exhibit 208. Do you  
22 recognize that?

23 A. Yes. This is FEMA's direct response to  
24 Mr. Trentadue.

25 MS. WYER: 208. Is it frozen? Defendant moves to

1 admit Exhibit 208.

2 THE COURT: Any objection to 208?

3 MR. TRENTADUE: Other than relevance, Your Honor, it  
4 is -- I thought the issue was the FBI's response, not FEMA's  
5 response or the GSA's response.

6 MS. WYER: Well, these are pages that the FBI located  
7 and referred to another agency so they were part of the  
8 response.

9 THE COURT: Exhibit 208 is received.

10 (Whereupon, Defendant's Exhibit 208 was received  
11 into evidence.)

12 Q. (By Ms. Wyer) And Exhibit 209, do you recognize  
13 Exhibit 209?

14 A. 209 is GSA's response. They were supposed to  
15 respond directly to Mr. Trentadue but sent the material back  
16 to us so we released the information.

17 MS. WYER: Let the record reflect Exhibit 209 is a  
18 letter from the FBI to Mr. Trentadue dated April 29th, 2010.  
19 We move to admit Exhibit 209.

20 THE COURT: Any objection to 209?

21 MR. TRENTADUE: No, sir.

22 Q. (By Ms. Wyer) Now going back to exhibit --

23 THE COURT: Exhibit 209 is received.

24 MS. WYER: Sorry.

25 (Whereupon, Defendant's Exhibit 209 was received

1           into evidence.)

2           MS. WYER:   Sorry, Your Honor.

3           Q.     (By Ms. Wyer) Going back to Exhibit 200, the  
4           plaintiff's original request, did that request mention  
5           another FOIA request that had been made in the past by  
6           someone else?

7           A.     Yes. On the second page it mentioned the case  
8           caption *David Hoffman versus DOJ*.

9           Q.     And are you aware whether anything -- whether  
10          your office looked into that previous request when  
11          processing the response to the plaintiff's request?

12          MR. TRENTADUE:   Objection foundation, Your Honor.  
13          When was this done if it was done.

14          THE COURT:   First she can answer yes or no and then we  
15          will find out how she knows.

16          THE WITNESS:   I am familiar with it, yes. Um, at the  
17          initial stage, at the administrative stage when the request  
18          came in, they only searched for OKBOMB so they had not done  
19          a search for the *Hoffman* material. Once it reached  
20          litigation, I personally pulled the *Hoffman* civil litigation  
21          file and reviewed the file.

22          MR. TRENTADUE:   Objection foundation of when this was  
23          done, Your Honor.

24          THE COURT:   I'm sorry?

25          MR. TRENTADUE:   When was this done?

1 MS. WYER: Those are questions that the plaintiff  
2 could ask on cross-examination, Your Honor.

3 THE COURT: I am going to sustain the objection. A  
4 foundation question is appropriate. We need to know when  
5 she did this.

6 Q. (By Ms. Wyer) Ms. Mitchell, could you explain --  
7 first of all, as far as you know would there have been any  
8 reason at the initial processing of the request for your  
9 office to look at the *Hoffman* file?

10 MR. TRENTADUE: Objection speculation.

11 THE COURT: Sustained.

12 Q. (By Ms. Wyer) Ms. Mitchell, are you familiar  
13 with the procedures for when -- are you familiar with what  
14 happened in regard to the processing of this request as you  
15 had described earlier?

16 A. Am I aware?

17 Q. Are you familiar with what happened in regard to  
18 the initial search that was done and the subsequent referral  
19 to the field office as you had explained earlier?

20 A. I am familiar with the searches that were  
21 performed.

22 Q. And so as you had testified after the first  
23 search identified the OKBOMB file it was sent to the field  
24 office, correct?

25 MR. TRENTADUE: Objection leading.

1 MS. WYER: I mean is that what -- you had already  
2 testified to this.

3 THE COURT: Is that a question?

4 MS. WYER: Do you recall -- well, she had already  
5 testified to this, Your Honor.

6 Q. (By Ms. Wyer) In any case, do you -- when -- do  
7 you recall when you looked at the *Hoffman* file?

8 A. I believe it was like four or so months ago. It  
9 was several months ago.

10 Q. And do you -- what did you do in regard to the  
11 *Hoffman* file when you looked at it?

12 MR. TRENTADUE: Objection relevance, Your Honor. This  
13 was done in preparation for the trial not in preparation for  
14 responding to my request.

15 THE COURT: What do you claim for this?

16 MR. TRENTADUE: I beg your pardon? I said --

17 THE COURT: I'm asking Ms. Wyer what does the FBI  
18 claim for this information?

19 MS. WYER: This is something that the RIDS office did  
20 in connection with this request. And so it is relevant to  
21 the processing of the request and following up on things  
22 that the plaintiff has suggested even if it occurred during  
23 the -- during the litigation, the entire response occurred  
24 during litigation, it is still relevant to its response.

25 THE COURT: Mr. Trentadue?



1 MR. TRENTADUE: Your Honor, this was obviously done in  
2 preparation for this trial. It had nothing to do with  
3 responding to my FOIA request. There is also a hearsay  
4 problem here with the witness testifying as to what the file  
5 showed instead of providing that file to me as it should  
6 have been done. They never -- it was with my initial  
7 request to look at *Hoffman* file. They don't do it, they do  
8 it after the court sets the trial date and just before the  
9 trial they go look at this and the witnesses say there is  
10 nothing there.

11 THE COURT: I'm going to require additional foundation  
12 as to why she searched the *Hoffman* file, who instructed her  
13 to do it, why she did it, and when she did it. So you can  
14 proceed.

15 Q. (By Ms. Wyer) Ms. Mitchell, do you remember why  
16 you looked at the *Hoffman* file?

17 A. I looked at the file -- well, let me back up. I  
18 looked at the request and determined that we had not  
19 responded to that portion of the request. So I personally  
20 culled the file to make sure that nothing in there was  
21 responsive.

22 THE COURT: What was it that caused you to go back and  
23 look at the request to determine that you hadn't reviewed  
24 the *Hoffman* file?

25 THE WITNESS: Well, Your Honor, this entire proceeding

1 or all --

2 THE COURT: It was in response to the litigation?

3 THE WITNESS: Right, but as --

4 THE COURT: It was not done as a part of the initial  
5 search?

6 THE WITNESS: But all of the searching was done during  
7 the litigation because he filed his litigation quickly after  
8 we received the FOIA request.

9 THE COURT: And the best of your recollection this was  
10 done when?

11 THE WITNESS: Like four or five months ago.

12 THE COURT: Did someone ask you to search and review  
13 the *Hoffman* file?

14 THE WITNESS: No. In my position I mean that is part  
15 of my job to make sure that we adequately responded to the  
16 FOIA request.

17 THE COURT: How did it come to your attention that you  
18 had not looked at the *Hoffman* file?

19 THE WITNESS: Well, I corresponded with several  
20 people, one being Linda Vernon at the field, through e-mails  
21 asking if she was familiar and didn't get a response on that  
22 portion of the e-mail so later I culled the file.

23 THE COURT: Okay. You may proceed.

24 Q. (By Ms. Wyer) Ms. Mitchell, can you explain to  
25 the court how you went about looking at the *Hoffman* file and

1 what were you looking for?

2 A. Specifically I was looking for any information  
3 regarding videotapes or the possession of videotapes as  
4 requested on the other videotapes that Mr. Trentadue was  
5 seeking.

6 Q. Did you find any documents in the *Hoffman* file  
7 relating to videotapes?

8 A. I found documentation, yes.

9 Q. The next set of documents is Defendant's Exhibits  
10 243 through 246. Ms. Mitchell, could you take a look at  
11 that span of documents and explain whether you're familiar  
12 with those?

13 A. Yes, I'm familiar with these.

14 Q. Could you explain what those documents are?

15 A. The first, Defendant's Exhibit 243, is the Third  
16 Declaration of Gregory Scott Rogers who was an agent for the  
17 FBI.

18 Q. And so how did you -- are these the documents  
19 that you found in the *Hoffman* file?

20 MR. TRENTADUE: Objection foundation.

21 THE COURT: Overruled.

22 THE WITNESS: They are.

23 Q. (By Ms. Wyer) And can you explain are these --  
24 are these the documents that you identified as potentially  
25 pertinent to the plaintiff's request?

1 THE COURT: Let me ask you to clarify the record. So  
2 far she has only referenced Defendant's Exhibit 243 and  
3 you're referring to documents. So we need to clarify  
4 exactly which document she is talking about.

5 Q. (By Ms. Wyer) Okay. Ms. Mitchell, could you  
6 just go through each of those exhibit numbers and explain  
7 what they are?

8 A. Sure. 243 is again the Declaration of Gregory  
9 Rogers an agent for the FBI where he notes that a list of  
10 documents and videotapes --

11 MR. TRENTADUE: Objection hearsay on that, Your Honor.

12 THE COURT: The document speaks for itself. Just  
13 describe which ones you are referring to. The content of  
14 the documents will speak for what is in the document.

15 THE WITNESS: So the title? You just want the title?

16 THE COURT: Just reference the title.

17 THE WITNESS: Okay. 243 is the Third Declaration of  
18 Gregory Scott Rogers. 244 is the FBI Headquarters Request,  
19 it is a chart.

20 Q. (By Ms. Wyer) On Exhibit 244, can you explain  
21 what the label is on the bottom left hand corner of the  
22 first page?

23 A. The bottom is a handwritten notation of the file  
24 and serial. So this came from 197-OC-60590 and it is serial  
25 86. The 197 file class indicates that it is the civil

1 litigation file. And this is from the *Hoffman* civil  
2 litigation, *Hoffman V DOJ*.

3 Q. And did you take note of anything else in that  
4 label?

5 A. At the bottom there is handwriting that says FBI  
6 HQ and OC meaning the field list of documents provided to  
7 the AUSA.

8 Q. And did you understand what that meant?

9 A. These lists were provided to the AUSA, the  
10 Assistant United States Attorney.

11 Q. Meaning the AUSA who was handling the *Hoffman*  
12 case?

13 A. Correct.

14 Q. And let the record reflect that the top of this  
15 document is titled FBI Headquarters Request. Now, looking  
16 at 245 and 246, could you continue describing those?

17 A. 245 is titled List of Admitted Exhibits and it  
18 says underneath the case caption is McVeigh 96-CR -- it is a  
19 little illegible. It is the case number for the McVeigh  
20 matter.

21 Q. And 246?

22 A. 246 is -- are the Admitted Exhibits for the  
23 Nichols matter.

24 Q. Now, did you engage in some kind of analysis to  
25 connect the first document with these other documents, the

1 Exhibit 243?

2 MR. TRENTADUE: Objection foundation, Your Honor.  
3 When was this analysis done and for what purpose?

4 THE COURT: Sustained. I think that you're implying  
5 that these were all found as a part of the *Hoffman* file.  
6 You have not asked her that question yet.

7 MS. WYER: Okay.

8 Q. (By Ms. Wyer) Did you find all of these documents  
9 in the *Hoffman* file?

10 A. Yes. In the civil matter *Hoffman V DOJ* which is  
11 indicated on the serial stamp or handwritten stamp on  
12 document exhibit -- Defendant's Exhibit 244.

13 Q. And was there any connection between all of these  
14 documents as far as you were able to tell?

15 A. Um, the connection --

16 MR. TRENTADUE: Objection foundation on that, Your  
17 Honor.

18 MS. WYER: I'm asking her a question so she can  
19 explain that, Your Honor.

20 THE COURT: Well, I'm going to sustain the objection  
21 as to being ambiguous as to what you mean by connection.

22 Q. (By Ms. Wyer) Why did you identify these  
23 particular exhibits?

24 A. Again, I was looking for any reference to  
25 videotapes because that was the focus of Mr. Trentadue's

1 request. So I reviewed the civil litigation for the *Hoffman*  
2 matter, specifically for any video coverage that there may  
3 be. And I located the Rogers declaration which referenced  
4 23 tapes that may be responsive to the *Hoffman* matter.

5 Q. And did that -- did the Rogers declaration point  
6 you to any other documents?

7 A. Yes. It references the list of documents and  
8 videotapes that were found.

9 Q. And were you able to locate the lists that are  
10 referenced in that declaration?

11 A. Yes.

12 Q. And are those exhibits that we have already  
13 talked about?

14 A. Right. They are the list that we have already  
15 discussed, Exhibit 244 and 245 and 246.

16 Q. Did you review these materials to see if they  
17 identified any additional tapes or documents that would be  
18 responsive to the Plaintiff's FOIA request in this case?

19 A. I reviewed them and while they may reference a  
20 videotape, it is not the video coverage that Mr. Trentadue's  
21 request specifically sought.

22 Q. And when you say that are you talking in  
23 particular about a part of the -- which part of -- what in  
24 particular are you talking about there?

25 A. On the request, the narrowed request, he had

1 asked for specific locations such as the Regency Tower. So  
2 I was focusing on the terms that he provided in the narrowed  
3 request and did not find video coverage for that. On  
4 Defendant's Exhibit 244, on the chart, that references  
5 documents --

6 Q. Could we look at Bates stamp 398?

7 A. Yes. On the type of document there is one  
8 videotape reference and it is the description is tape from  
9 Channel 4 regarding bomb site.

10 Q. And is that -- is that page under the portion --  
11 could you -- I don't know if you can flip through and see if  
12 that page is under a particular heading, on the first page,  
13 whereas on Bates Page 405 there is a different heading?

14 A. That is correct. There were two charts prepared.  
15 One for Headquarters Request and one for the field, Oklahoma  
16 City Request.

17 Q. Did you also look at videotapes identified in  
18 this Oklahoma City Request list on Bates Page 420?

19 A. Yes. The Oklahoma City Request chart on the last  
20 page there are several entries for videotapes.

21 Q. Did you determine whether anything on these lists  
22 identify videotapes responsive to the plaintiff's request  
23 that he had not received already?

24 A. Not that he had not received already, no.

25 Q. Now to summarize, did the plaintiff receive a



1 copy of the Hanger tape that he had requested?

2 A. A copy, yes.

3 Q. And did he receive a copy of a tape showing the  
4 Ryder Truck?

5 A. Yes. There was footage on the Regency Tower  
6 tape.

7 Q. And was any other tape, other than that one  
8 found, that showed a Ryder Truck?

9 A. Not that I remember.

10 Q. On the morning of the bombing by the Murrah  
11 Building?

12 A. No.

13 Q. And based on your knowledge and experience  
14 working in the FBI FOIA Records Office, can you think of any  
15 other location within the FBI where records responsive to  
16 the plaintiff's request might be found or are likely to be  
17 found?

18 A. No.

19 Q. Can you think of any other method for searching  
20 that could be used by the FBI that would be likely to locate  
21 additional tapes that the plaintiff has not already  
22 received?

23 A. No, not that he has already received, no.

24 MS. WYER: No further questions, Your Honor.

25 THE COURT: Cross-examination?

1 MR. TRENTADUE: Yes, sir. It may take me a second to  
2 set this up, Your Honor, but I think it will go quickly.

3 MS. WYER: Your Honor, I wanted to move to admit  
4 Exhibits 243 through 246.

5 THE COURT: Exhibits 243 through 246 will be received.  
6 (Whereupon, Defendant's Exhibits 243, 244, 245 and 246  
7 were received into evidence.)

8 **CROSS-EXAMINATION**

9 **BY MR. TRENTADUE:**

10 Q. Good morning, Ms. Mitchell.

11 A. Good morning.

12 Q. Just to get started on a few things you talked  
13 about, before I get into my complete examination, Exhibits  
14 243 -- 243, 244, 245 and 246 you say that was part of your  
15 spontaneous decision to review the *Hoffman* file?

16 A. That is correct.

17 Q. And my request for review of the *Hoffman* file was  
18 part of my initial FOIA request years ago, wasn't it?

19 A. That is correct.

20 Q. And you do this review within the last four or  
21 five months?

22 A. The review, yes, of the *Hoffman* file.

23 Q. Yes. And you did it to respond to my FOIA  
24 request?

25 A. That is correct. Because at the administrative

1 stage it was an oversight.

2 Q. But you didn't send me Exhibit 243, did you,  
3 ma'am?

4 A. I don't know. I personally did not, no. I don't  
5 know if counsel did.

6 Q. So you provided those to counsel?

7 A. Yes.

8 Q. And you didn't send me Exhibit 244, did you,  
9 ma'am?

10 A. No, sir.

11 MS. WYER: Objection, Your Honor, relevance. These  
12 exhibits are not responsive to the plaintiff's request.

13 THE COURT: Overruled.

14 Q. (By Mr. Trentadue) You didn't send me  
15 Exhibit 245, did you, ma'am?

16 A. No, sir.

17 Q. You didn't send me Exhibit 246, did you, ma'am?

18 A. I personally, no.

19 Q. And in truth, in fact, ma'am, and you're under  
20 oath, you were asked to do this search in preparation for  
21 this trial, weren't you?

22 A. That is not correct, sir.

23 Q. And you communicated this to your trial counsel  
24 though?

25 A. I work under the supervision of the Office of

1 General Counsel and I went through the file and gave him my  
2 findings.

3 Q. Now, you say you were in the -- is it the  
4 litigation section?

5 A. Litigation Support Unit.

6 Q. Okay. And is that part of the FOIA response  
7 team?

8 A. The FOIA processing unit.

9 Q. Yes.

10 A. We're all a team in responding to requests. I'm  
11 not sure I understand if we're -- if you're asking if I do  
12 FOIA processing, the answer is no.

13 Q. Did I understand you correctly that you, when it  
14 goes to litigation, that you take an oversight role?

15 A. Of what was -- how the requests -- how it was  
16 received and handled, yes.

17 Q. And what is being produced, you take an oversight  
18 role in that, too?

19 A. Correct.

20 Q. And you work with Mr. Hardy?

21 A. I work under Mr. Hardy. I am under supervision  
22 -- I have a supervisor and what is called a unit chief and  
23 they report to Mr. Hardy.

24 Q. Okay. But do you report directly to Mr. Hardy?

25 A. I don't report directly to Mr. Hardy, I work

1 under Mr. Hardy. I do have meetings with Mr. Hardy if the  
2 case warrants.

3 Q. Okay. Did you have meetings with Mr. Hardy about  
4 this case?

5 A. Yes, sir.

6 Q. When is the last one?

7 A. The last one would have been a week ago.

8 Q. Okay. Who else was there besides you and  
9 Mr. Hardy?

10 A. At the meeting it would have been counsel.

11 Q. Okay. And you were going over the testimony  
12 you're giving here today?

13 A. My counsel --

14 MS. WYER: Objection, calls for privileged  
15 information.

16 MR. TRENTADUE: I'm not asking --

17 THE COURT: Well, the subject matter of what they were  
18 discussing is not privileged. Overruled. You can answer.  
19 Just tell -- the answer is yes or no.

20 THE WITNESS: I am not sure I understand the question.  
21 Are you asking if I was in the meeting?

22 THE COURT: Would you repeat the question.

23 Q. (By Mr. Trentadue) You attended a meeting a week  
24 ago with Mr. Hardy and counsel?

25 A. That is correct.

1 Q. And the purpose was to prepare for this trial?

2 A. Correct.

3 Q. Okay. Previous to that time, when had you met  
4 with Mr. Hardy?

5 A. I met with him over the course of several -- I  
6 mean it varies, it is just whenever it warrants.

7 Q. Okay. With respect to this case, how many times  
8 have you met with Mr. Hardy?

9 A. Since 2008?

10 Q. Yes.

11 A. I would be guessing. I would say 10, 15 times.  
12 I would be, again, Your Honor, I would be guessing.

13 Q. Was counsel always present when you met with  
14 Mr. Hardy?

15 A. Any time -- any time I speak to Mr. Hardy on any  
16 case typically a member of my supervision such as the team  
17 captain or my team -- my unit chief who is an attorney, um,  
18 or the Office of General Counsel FOIA litigation counsel is  
19 present, whether it be Polycom or in person.

20 Q. Now, let's look at Exhibit 214, defense exhibit,  
21 if I can do that. I should have gotten this hooked up  
22 before. There we go. It is not showing a signal, Your  
23 Honor. If I could have just a second. I have it now. If  
24 you would turn to your exhibit --

25 THE COURT: Perhaps we could ask the defense for use

1 of their electronic version of Exhibit 214 then we will have  
2 it on the screen. We now have it on the screen.

3 Q. (By Mr. Trentadue) Yes. Now, if you look at the  
4 bottom of the page on Defense Exhibit 214, when you  
5 testified that your office prepared these copies for me and  
6 they were unredacted, if I understood you correctly you were  
7 saying you didn't redact anything you received?

8 A. That is right, I am not a FOIA analyst.

9 Q. And when you look at the bottom of the page on  
10 214, that reflects what you received from Oklahoma City,  
11 doesn't it?

12 A. The --

13 MS. WYER: Objection Your Honor, lack of foundation.

14 Q. (By Mr. Trentadue) Well, you testified about  
15 Exhibit 214 that you were familiar with this document and  
16 this process, did you not, ma'am?

17 A. I did.

18 Q. Okay.

19 A. But what portion? I guess I'm confused. Are you  
20 talking about under the DVD copies?

21 Q. Yes, it says burned master redacted copy. Now,  
22 they don't send you the original from Oklahoma City, do  
23 they, ma'am?

24 MS. WYER: Objection, Your Honor. There seems to be  
25 confusion in the plaintiff's understanding of this exhibit.

1 THE COURT: Overruled.

2 Q. (By Mr. Trentadue) Correct, they don't send you  
3 the original?

4 A. I don't know. I don't know if they were  
5 originals.

6 Q. No, but isn't it the practice they usually send  
7 you a copy, what they call a master copy?

8 A. That is not what this document suggests. The  
9 master copy just means that we maintained a master copy in  
10 our media room so that if additional requesters came in on  
11 the same material that you have requested, we would have a  
12 master copy to use for processing additional FOIA requests.  
13 And then burned copy for Mr. Trentadue just means that a  
14 copy was provided to you.

15 Q. Okay. But back on my original question, you  
16 don't receive the originals from the field offices, do you,  
17 ma'am?

18 A. For this case or in all cases? I mean --

19 Q. For this case?

20 A. For this case, I don't believe they were  
21 originals.

22 Q. So you got whatever they decided to send you or  
23 whatever was in the file that they searched in Oklahoma  
24 City?

25 A. These were evidence files. I had nothing to



1 believe -- there is no reason for me to believe that they're  
2 not.

3 MR. TRENTADUE: Objection, move to strike as  
4 nonresponsive, Your Honor.

5 THE COURT: Sustained. The answer is stricken.

6 Q. (By Mr. Trentadue) Now, a little bit about what  
7 exactly you do with FOIA and how the testimony you gave  
8 relates to the various departments and searchable places.  
9 May I approach, Your Honor?

10 THE COURT: You may.

11 Q. (By Mr. Trentadue) Ma'am, I have showed you -- I  
12 have handed you a memorandum decision?

13 THE COURT: Do you want to mark this so we have a  
14 clear record?

15 MR. TRENTADUE: I'm not going to offer it, Your Honor.  
16 I want to ask her --

17 THE COURT: We should have a record of what you're  
18 using whether you're going to offer it or not.

19 MR. TRENTADUE: I think this will be Plaintiff's 67.

20 THE COURT: Okay. This will be marked as Plaintiff's  
21 Exhibit 67.

22 Q. (By Mr. Trentadue) Do you remember this case,  
23 ma'am, the *Negley* case?

24 A. It was not one of my cases. I am not familiar  
25 with *Negley*. I have heard the term *Negley*, but I'm not

1 familiar with the specifics of *Negley*.

2 Q. Well, in this case they mentioned --

3 MS. WYER: Objection, Your Honor, she said she was not  
4 familiar with the case.

5 MR. TRENTADUE: Well, in this case they mention --

6 THE COURT: Yeah, let me rule on the objection.

7 MS. WYER: Lack of foundation, Your Honor.

8 THE COURT: Well, I don't know what the question is  
9 yet, so I'm going to overrule it.

10 Q. (By Mr. Trentadue) There is a discussion in the  
11 case, I'll represent to you and not take the time to read  
12 it, of search locations inside of the FBI. And that is a  
13 little chart I gave you. And the first one, I think you  
14 talked about it, was the Investigative Case Management  
15 System, correct, ma'am?

16 A. Yes.

17 Q. And what again is the purpose of that?

18 A. ICM is where we -- I say we, but I'm not involved  
19 in opening and closing cases, but I understand ICM is where  
20 you can open and close cases, you can set leads, it is a  
21 case management tool for agents and personnel working on  
22 their investigations.

23 Q. And you search it by an index or do you know  
24 that?

25 A. ICM?

1 Q. Yes.

2 A. ICM is not searching the Universal Index as I  
3 understand it.

4 Q. Okay. I'm not -- I'm not talking about the  
5 Universal Index. It is -- you search that by an index, not  
6 by Universal Index. In other words, you don't go into text  
7 base searches of the Investigative Case Management?

8 MS. WYER: Objection, Your Honor, this is lack of  
9 foundation.

10 Q. (By Mr. Trentadue) Have you ever worked with the  
11 Investigative Case Management System before?

12 A. I worked with it -- no. As I mentioned, I don't  
13 do investigative cases and that is more to manage your  
14 investigative cases.

15 Q. Okay. And then you have Electronic Case File?

16 A. Yes, sir.

17 Q. And that is ECF?

18 A. Yes.

19 Q. Which contains, as I understand it, all FBI  
20 generated documents?

21 A. Not all, no.

22 Q. Okay. Well, talk about the ones that are in  
23 there. It contains FBI generated documents?

24 A. It may contain FBI generated documents.

25 Q. But there are some that are not put in there,

1 correct?

2 A. That is correct.

3 Q. But as far as the ones that are put in there,  
4 they're text base searchable, aren't they?

5 A. Those that are in ECF are text base.

6 Q. And then you have documents that don't go into  
7 ECF, correct?

8 A. There would be documents that are not text  
9 searchable in ECF.

10 Q. And those documents you call restricted  
11 documents?

12 A. I don't know the term restricted.

13 Q. Okay. But there are documents that you don't put  
14 in there?

15 A. There may be documents that are not in ECF; that  
16 is correct.

17 Q. If you search for these you do a manual search?

18 A. The manual -- manual indices?

19 Q. Yes.

20 A. The manual indices, we would search the manual  
21 indices. Everything from 1995 -- ACS was implemented in  
22 1995. So there may not be text search information in ECF  
23 that is searchable prior to that date.

24 Q. Okay.

25 A. There would be manual cards for criminal

1 proceedings in our investigations, there would be manual  
2 cards from 19 -- I think it is 1978 and earlier there would  
3 be a manual card. But everything after 1978 would be in the  
4 automated indices, ACS.

5 Q. Okay. But the ACS system came into existence in  
6 October of 1995?

7 A. Right, it was implemented then.

8 Q. And prior to that it was a manual search of the  
9 indices?

10 A. Again, as I mentioned for -- when you say manual  
11 indices, we're talking about cards that existed and you  
12 would have to manually search those for let's say a criminal  
13 investigation the cards would represent information from 19  
14 -- I think it is 1987 and/or -- sorry, 1978 and earlier.  
15 Everything after 1978 was in -- is in ACS.

16 Q. Okay. In terms of what doesn't go into ECF, who  
17 makes that decision?

18 A. Um, I guess it is the individual working the  
19 case, so maybe the case agent.

20 MS. WYER: Your Honor, lack of foundation.

21 Q. (By Mr. Trentadue) Well, somebody makes the  
22 decision, don't they, ma'am?

23 MS. WYER: Objection, Your Honor, lack of foundation.

24 THE COURT: Well, let me back up and deal with it. As  
25 to the first objection, I will sustain that. As to the

1 second objection, overruled.

2 Q. (By Mr. Trentadue) Do you have an understanding  
3 of who makes the decision not to put documents into the ECF  
4 system?

5 A. That would be, I am just guessing, it would be  
6 the individual working the cases.

7 Q. And in terms of the ECF system, in this case that  
8 wasn't searched, was it?

9 A. Which part, I'm sorry.

10 Q. In my case, my FOIA request, the ECF wasn't  
11 searched, was it?

12 A. The ECF wasn't searched because as I mentioned --

13 MR. TRENTADUE: Objection, ma'am, nonresponsive. Move  
14 to strike.

15 THE COURT: So far there is nothing to strike, but let  
16 me caution you to listen carefully to the question and  
17 answer just the question that is asked.

18 MS. WYER: Your Honor, we ask that the witness be  
19 allowed to respond fully to the question.

20 THE COURT: Well, he is entitled to conduct his  
21 cross-examination and she is required to answer the question  
22 he asks. If you want to follow up on that you may do so on  
23 your redirect. Do you want to repeat the question,  
24 Mr. Trentadue?

25 Q. (By Mr. Trentadue) Ma'am, with respect to my

1 FOIA request, the ECF system was not searched, was it?

2 A. The ECF was not searched.

3 Q. Okay. And that is a text base searchable system,  
4 isn't it, or data base?

5 A. For material that is in there, it would be text.  
6 It is only as good as the information in there.

7 Q. And then I think you have, if you look at 44?

8 A. 44.

9 Q. Plaintiff's Exhibit 44?

10 A. Where is 44?

11 Q. It will be in the blue binder.

12 A. Oh, this one?

13 Q. Yes, ma'am. Maybe I'll come up. Okay, as part  
14 of your oversight on this case, fair to say that you  
15 reviewed the filings in the case?

16 A. The filings?

17 Q. The briefs and motions I filed in the case?

18 A. Not all of them.

19 Q. You certainly read my correspondence with  
20 counsel?

21 A. If it was provided to me. I am not copied on  
22 everything.

23 Q. Okay. Do you recall seeing this document,  
24 Plaintiff's Exhibit 44?

25 A. No.

1 Q. At the bottom, and I'll lay the foundation for it  
2 with other witnesses, but let me ask you this. You don't  
3 ever remember seeing this document and the statement, it had  
4 been brought to my attention that the OKBOMB file is  
5 restricted?

6 MS. WYER: Objection, asked and answered, Your Honor.

7 THE COURT: Overruled.

8 Q. (By Mr. Trentadue) And that some of you have not  
9 been able to upload documents DTOU Unit Chief blank advised  
10 that we are to e-mail all documents related to the Nichols  
11 search and any related interviews in Oklahoma City to  
12 Oklahoma City to somebody. Also follow this with hardcopies  
13 of the documents. She will upload them there. Any problems  
14 call me. You don't recall seeing that?

15 A. I have not have seen this document.

16 Q. Would it have been any concern to you if you had  
17 seen this document and you knew that all of the documents  
18 perhaps --

19 MS. WYER: Objection, calls for speculation and lack  
20 of foundation.

21 THE COURT: You need to let Mr. Trentadue finish his  
22 question before you make your objection.

23 Q. (By Mr. Trentadue) Would it have been any  
24 concern to you, ma'am, to know that all of the documents  
25 were not being uploaded into the ACF in the OKBOMB case?



1 MS. WYER: Objection, lack of foundation.

2 THE COURT: The question is what is in her mind. She  
3 can answer that.

4 MS. WYER: Assumes facts not in evidence, Your Honor.

5 THE COURT: Well, the question doesn't call for it to  
6 be in evidence. He simply is asking if that would have been  
7 a concern to her. She can answer yes or no.

8 THE WITNESS: Yes or no answer only?

9 THE COURT: Yes, you should answer.

10 THE WITNESS: Well, if you're asking my opinion --

11 Q. (By Mr. Trentadue) If it was a concern to you,  
12 yes, ma'am?

13 A. Well, may I elaborate? Because I think it is --

14 THE COURT: Just answer yes or no first and if  
15 Mr. Trentadue wants to follow up he can.

16 THE WITNESS: Ask the question again, sir.

17 Q. (By Mr. Trentadue) Would it concern you, if this  
18 was true, that all of the documents in the OKBOMB file are  
19 not being uploaded?

20 A. No.

21 Q. That would certainly have an effect on your  
22 ability to do your job though, wouldn't it?

23 MS. WYER: Objection, Your Honor, relevance. This  
24 document doesn't even say what the plaintiff is purporting  
25 that it says. I mean there is --

1 THE COURT: Again, Ms. Wyr, please let Mr. Trentadue  
2 finish his questions before you make your objections.

3 Q. (By Mr. Trentadue) If in fact this is true,  
4 ma'am, it would certainly impact your ability to do your job  
5 as the law required, wouldn't it?

6 A. No.

7 Q. So if all of the documents are not being uploaded  
8 into the ECF system, that wouldn't interfere with your  
9 ability to do your job?

10 A. No.

11 Q. And then we look over and we see you also have  
12 here what is called an Electronic Surveillance database?

13 A. That is a system of record.

14 Q. Yes. And it contains records on the FBI  
15 surveillance activities?

16 A. That is correct.

17 Q. And it is searchable by an index?

18 A. The ELSUR indices, correct.

19 Q. And that wasn't searched in this case, was it?

20 A. No, but your request was not for ELSUR related  
21 material. You asked for surveillance of the surrounding  
22 buildings, the Murrah Building. That would not be through  
23 the ELSUR, sir.

24 Q. So you understood my request was for surveillance  
25 cameras from the surrounding buildings?

1           A.    You asked -- you asked for that as well as other  
2 specific locations.

3           Q.    If we could look at my request, exhibit --  
4 initial request 200?

5           A.    Plaintiff or exhibit -- or defendants?

6           Q.    Defendant's 200?

7           A.    Yes, sir.

8           Q.    And I start out and say, "I request a copy of all  
9 surveillance videotapes taken from the area surrounding the  
10 Alfred P. Murrah Building on April 19, 1995" and I list some  
11 buildings and then I go on and say, "this request would also  
12 include the security video tapes from the area that show the  
13 Ryder Truck detonation three minutes and six seconds after  
14 the suspects exited the truck." And I direct you to a  
15 specific secret service timeline, don't I, as to where that  
16 came from.

17          A.    This is your original request, yes.

18          Q.    And then I go on and say, "I would also like  
19 copies of all reports, including 302's that describe and/or  
20 reference the FBI taking possession of these videotapes."

21          A.    That is correct.

22          Q.    Then on the second page I say, "I would like a  
23 copy of the videotape taken from Oklahoma Highway Patrol  
24 Officer Charlie Hanger's patrol car, which recorded the  
25 arrest of Timothy McVeigh on April 19, 1995." Then I go on

1 to say, "I would also like copies of all reports, including  
2 302's that describe and/or reference the FBI taking  
3 possession of this videotape."

4 A. That is correct.

5 Q. And then I go on and discuss with you the *Hoffman*  
6 case, and I say, "That case was captioned *David Hoffman*  
7 *versus United States*, it was brought in the United States  
8 District Court for the Western District of Oklahoma,"  
9 correct?

10 A. Yes, sir.

11 Q. And then even there I even attached, and I  
12 referenced the fact that Mr. Hoffman had years ago made the  
13 same request as myself. And if you look at page -- the top  
14 it will be Page 5 of 22, and this is an order from the  
15 Western District of Oklahoma the *Hoffman* case. Do you see  
16 the order, ma'am?

17 A. Yes, sir.

18 Q. And Page 2 of the order paragraph 3 it says, this  
19 is what Mr. Hoffman is asking for, "The videotape taken from  
20 OHP Officer Charlie Hanger's patrol car upon the arrest of  
21 Timothy James McVeigh on 4/19/95." Paragraph 4 he asks for  
22 "Surveillance videos taken from the area surrounding -- from  
23 the area surrounding the Alfred P. Murrah Building on August  
24 -- on April 19, 1995," basically the same request I make,  
25 correct, ma'am?

1 A. Yes.

2 Q. Okay. Word for word almost, isn't it?

3 A. Yes.

4 Q. And then if you turn over to the next page,  
5 Page 11, then they're talking about a declaration of Mr. --  
6 is it Hodes? Do you know Mr. Hodes?

7 A. I have heard the name.

8 Q. What was his role with the FBI, if you know?

9 A. I don't really remember. Honestly, I have heard  
10 the name.

11 Q. Okay. But he apparently provided a declaration  
12 as to what the FBI was withholding from Mr. Hoffman's  
13 request, correct?

14 A. I don't know without reading this. Which  
15 paragraph would you like me to read?

16 Q. Just read the top two.

17 A. What was the question?

18 Q. And then if you -- the question is, he provides  
19 an affidavit or declaration to the court saying what the FBI  
20 found that was responsive to his request. And if you turn  
21 to the -- see the next page, Page 12, second paragraph, it  
22 says, "Concerning the searches for records requested by  
23 plaintiff, Mr. Hodes states in full:" And there is a  
24 description of the search and then it has FBI HQ. What do  
25 you understand that to be, ma'am?

1           A.    I am not sure I am following your exhibit.  So am  
2 I looking at the number at the bottom?

3           Q.    No.

4           A.    The Bate number or the top --

5           Q.    Let's go with the number at the bottom.  It would  
6 be number 11 at the bottom?

7           A.    Well the Bate Number 11.

8           Q.    Yes.

9           A.    The D-00011.

10          Q.    Yes.

11          A.    Because there are like three numbers on this  
12 page.  So where on this page then am I looking?

13          Q.    You see it starts the first full complete  
14 paragraph says, "Concerning the searches for records."

15          A.    Yes, sir.

16          Q.    And then Mr. Hoffman describes a search and then  
17 he states down there he has an entry says, so the court  
18 responds or supposedly quotes Mr. Hoffman and says, FBI HQ.  
19 What do you understand that to mean, ma'am?

20          A.    FBI headquarters.

21          Q.    That would be in Washington, D.C.?

22          A.    D.C.

23          Q.    And it says 300 documents totalling 1,500 pages?

24          A.    Yes, sir, I see that.

25          Q.    One videotape?

1 A. Yes, sir.

2 Q. Did you make any inquiry of any one at FBI  
3 headquarters what those 300 documents were?

4 A. No, sir. The headquarters file was also at the  
5 field.

6 Q. And you reviewed the headquarters file?

7 A. I did not review the -- I didn't review any file.  
8 No, sir.

9 Q. It says one videotape is being kept at FBI  
10 headquarters?

11 A. That is what it says.

12 Q. Did you make any effort to find out what that one  
13 videotape was?

14 A. No, sir.

15 Q. Didn't it seem strange to you in your history of  
16 working with FOIA that FBI headquarters would keep evidence  
17 rather than the field office that handles the investigation?

18 MS. WYER: Objection, calls for speculation.

19 THE COURT: I don't know how it calls for speculation  
20 if he is asking her view of it. Maybe you could reformulate  
21 the question.

22 Q. (By Mr. Trentadue) You handled many FOIA  
23 requests?

24 A. Yes, sir.

25 Q. And in this particular case you went to the

1 Oklahoma City Field Office which handled the initial  
2 investigation, correct?

3 A. Yes, sir. But they also maintained all OKBOMB  
4 related material.

5 Q. Right. Because they were all transferred there,  
6 correct?

7 A. That is correct.

8 Q. And do you have any understanding as to how long  
9 they were going to keep that material there?

10 A. No, sir.

11 Q. Do you have any understanding as to why they're  
12 keeping it?

13 A. Um, I don't know what the retention policy is on  
14 that file. I don't know.

15 Q. As far as you know, the policy is to keep  
16 material until they decide to get rid of it I guess?

17 A. No, I think we're -- I think it is dependent upon  
18 the regulations set by NARA as to how long we keep files.

19 Q. But they are obviously keeping that?

20 A. For however long they are required to do so.

21 Q. But my question to you, in your experience you  
22 always find it is the investigating field office that  
23 maintains the records on the case. I realize there are  
24 field offices that may do other parts of the investigation,  
25 but the case that is in charge -- the field office that is



1 in charge of the investigation maintains the evidence?

2 A. Again, I don't do investigations, I can only  
3 speak to this case.

4 Q. Okay. Have you ever had a case where you have  
5 had the FBI headquarters keeping 300 documents totalling  
6 1,500 pages in a major criminal case?

7 A. I have not had a request similar to yours so I  
8 can't answer that.

9 Q. Have you ever had a similar case where the FBI  
10 headquarters is keeping one videotape in a major case such  
11 as OKBOMB?

12 A. I don't know if they are keeping a tape that  
13 you're suggesting based on this declaration. I don't have  
14 personal knowledge of that, sir.

15 Q. But you certainly didn't follow up and ask, did  
16 you?

17 A. Again, all of the material was at the field. All  
18 of it is in the warehouse and we did searches for what you  
19 asked.

20 Q. It is your understanding, ma'am, to be truthful  
21 and totally accurate that all of the materials are in the  
22 warehouse, correct?

23 A. As I understand, yes.

24 Q. But you don't know that to be true though, do  
25 you, ma'am?

1           A.    How would I know that for 100 percent?  I can't  
2 answer that.

3           Q.    Then if you look at 203, and this was my narrowed  
4 request?

5           A.    Which number, I'm sorry?

6           Q.    Plaintiff's number 203?

7           A.    Plaintiffs --

8           Q.    It would be in the blue book.

9           A.    I didn't hear the number.

10          Q.    It is 203.  Actually it will be in the FBI's --  
11 it will be in the black binder.

12          A.    And it is two what, I'm sorry?

13          Q.    203.  And that is my narrowed request?

14          A.    Yes, sir.

15          Q.    Okay.  And I say I want the Murrah Building  
16 videotapes and I ask for taken from externally mounted  
17 cameras, don't I?

18          A.    Yes.

19          Q.    And I ask for the Journal Record Building and  
20 again I ask for externally mounted cameras, don't I?

21          A.    Yes, sir.

22          Q.    And the Regency Tower Apartment Building I say  
23 externally mounted cameras, correct?

24          A.    That is correct.

25          Q.    And I do the same for the U.S. Post Office

1 Building?

2 A. Yes, sir.

3 Q. The Water Resources Building?

4 A. External, yes.

5 Q. The YMCA Building?

6 A. Correct.

7 Q. And U.S. Federal Courthouse?

8 A. Correct.

9 Q. The Old U.S. Federal Courthouse?

10 A. Correct.

11 Q. Former Oklahoma City Main Library?

12 A. That is right.

13 Q. The parking lot at Sixth Street and Hudson?

14 A. Yes.

15 Q. All externally mounted cameras?

16 A. Correct.

17 Q. And then I go on to say, in addition to these, I  
18 want most the ones taken from the Murrah Building on the  
19 morning of April 19th, 1995. FBI documents currently in my  
20 possession describe the security videotapes as showing a  
21 Ryder Truck pulling up to the federal building and then  
22 pausing, 7 to 10 seconds, before resuming into a slot in the  
23 front of the building. The truck detonates three minutes  
24 and six seconds after the suspects exited the vehicle. That  
25 is what I asked for?

1 A. Correct.

2 Q. And did you, in the course of my correspondence  
3 with your counsel, you have undoubtedly seen that timeline  
4 where that description of the tape where the videotape  
5 occurs, haven't you, ma'am?

6 A. Um, yes.

7 Q. Did you do anything to follow up on that to see  
8 if it was true?

9 A. Um --

10 Q. I mean here you have to admit that the  
11 description is pretty detailed?

12 A. Yes, sir.

13 Q. It says seven to ten seconds pausing before  
14 resuming into the slot. Detonation three minutes and  
15 six seconds after the suspects exited the vehicle. Pretty  
16 specific?

17 MS. WYER: Objection relevance, Your Honor.

18 THE COURT: Overruled.

19 Q. (By Mr. Trentadue) Didn't it come to your mind  
20 that that tape may exist?

21 MS. WYER: Objection relevance.

22 THE COURT: Um --

23 THE WITNESS: From everything that we did, we went  
24 above and beyond.

25 THE COURT: Let me rule on the objection.

1 Mr. Trentadue, in terms of the existence of the tape and the  
2 question you have just framed, articulate why you believe  
3 that is relevant?

4 MR. TRENTADUE: It is not relevant.

5 THE COURT: Okay. Then the objection --

6 MR. TRENTADUE: That is what I'm asking is, armed with  
7 this knowledge, did you do anything to follow up?

8 THE COURT: That question I will allow.

9 MR. TRENTADUE: To see if there was something to it.

10 THE WITNESS: Yes, sir. I have had numerous  
11 communications with the field. Each time that you  
12 submitted, whether it be by letter or inquiry to counsel,  
13 each time we or I personally contacted the field. Again,  
14 they had the most knowledge of this case. May I?

15 Q. (By Mr. Trentadue) But in this particular  
16 timeline, they mentioned names, Secret Service Agent McNulty  
17 who prepared the timeline, they mentioned that information  
18 is being imparted to them by Director Freeh and someone else  
19 at FBI headquarters. Did you ask anyone about Director  
20 Freeh's involvement in providing this information?

21 A. With respect to the timeline that you refer to,  
22 one, I don't know the authenticity of the document. Two --

23 THE COURT: Let me remind you. Listen to the question  
24 again and answer just the question that is asked. If your  
25 counsel wants you to give a further explanation, she can do

1 that on her direct. Would you repeat your question,  
2 Mr. Trentadue?

3 Q. (By Mr. Trentadue) Other than -- yes, Your  
4 Honor. Other than ask someone within the Bureau of Oklahoma  
5 City, did you make any effort to inquire of anyone at  
6 headquarters if this had occurred?

7 A. No.

8 Q. And where evidence of the possible existence of  
9 records related to this tape might exist?

10 A. No, I didn't.

11 Q. Now, on your potential sources of search, you had  
12 the ZyImage, don't you, or ZyData base?

13 A. I believe we referred to it as the ZyIndex.

14 Q. Okay, ZyIndex. And that is a stand-alone  
15 database, isn't it?

16 A. Yes.

17 Q. And it is, you know, text base searches don't  
18 you?

19 A. Zy allows for text base.

20 Q. So if you type in the records it will produce the  
21 documents that contain those words?

22 A. Yes, sir.

23 Q. Okay. Now part of the FBI's official file system  
24 are sub files, aren't there?

25 A. There are sub files.

1 Q. Huh?

2 A. Yes, some files there are sub files.

3 Q. And sub files are dedicated to a particular  
4 subject, aren't they?

5 A. Yes.

6 MS. WYER: Objection, lack of foundation.

7 Q. (By Mr. Trentadue) You have reviewed the records  
8 in part of the FOIA request, correct, the FBI?

9 A. Yes, sir.

10 Q. You have become familiar with their record  
11 keeping process, I would think?

12 A. Yes.

13 Q. And you have become familiar with their record  
14 preparation process I would think?

15 A. Um, I don't -- I'm sorry.

16 Q. For example, you know what a sub file is?

17 A. Yes.

18 Q. And in each sub file is a discrete category of  
19 the main file, isn't it?

20 A. It pertains to the main, is that what you mean?

21 Q. Yes, I mean dedicated to a particular subject?

22 A. That is right. But the information in the sub  
23 could also be in the main. It just depends, yes.

24 Q. But --

25 A. There could be a copy.

1           Q.    But typically sub files are dedicated to specific  
2 subjects?

3           A.    Right.

4           Q.    Okay.  And not all sub files are uploaded into  
5 the ECF, are they?

6           A.    I think we have talked about this before.  Not  
7 everything is uploaded into ECF.

8           Q.    And by the same token, not all sub files are  
9 uploaded into the you call it the ZyImage?

10          A.    Zy.

11          Q.    Index?

12          A.    I don't personally use Zy, I don't know what is  
13 uploaded into Zy.

14          Q.    Do you understand that if you're looking for a  
15 sub file that hasn't been uploaded, you have to use a manual  
16 index?

17          A.    Um, not necessarily, no.

18          Q.    Well, but isn't it -- it is required in many  
19 instances, isn't it?  If it is not -- if it is not part of  
20 the ZyIndex system, it is not part of the ECF system, then  
21 you are going to have to do a manual search on an index  
22 word, aren't you?

23          A.    Well, there are other indexes available at the  
24 field that -- I mean there are other ways to find it other  
25 than manually searching.



1 Q. Okay. Do you know if a search was done for the  
2 sub files in response to my FOIA request?

3 A. A manual search was not done, but they did search  
4 ZyIndex as well as an evidence database that was used during  
5 discovery for the criminal proceedings.

6 Q. But if the material I'm looking for is not in  
7 those databases, then you're not going to find it with a  
8 text base search?

9 A. No, sir.

10 Q. And then you have a system they refer to as the  
11 -- that little handout I gave you the index cards?

12 A. Yes.

13 Q. Number five? That is what you're talking about.  
14 You became automated in '95. Back before then, you did a  
15 search on index cards?

16 A. Right. There were -- there were manual index  
17 cards, three by five cards.

18 Q. And those would be both at the field office?

19 A. No, all of that material has been transferred out  
20 to Winchester.

21 Q. Okay. And then you have what is called a  
22 Universal Index, you call it UNI?

23 A. The Universal Index, correct.

24 Q. And that is an index of all FBI investigative  
25 administrative cases?

1           A.    That is correct.

2           Q.    And the agent who prepares the report prepares  
3 the index, doesn't he?

4           A.    Those working on the case would indicate what  
5 would be indexed.

6           Q.    So you have what goes in there is the names of  
7 the individuals and entities that are the subject of the  
8 investigation?

9           A.    They put in pertinent things that they believe  
10 they can access their case files.

11          Q.    Yeah, so it would be names?

12          A.    It could be names.

13          Q.    Dates of birth, contact information, that sort of  
14 thing?

15          A.    Date of events, organizations that they're  
16 associated with, anything to help them locate their case  
17 file.

18          Q.    But it is, other than that, it is discretionary  
19 with the agents what other information he puts in there,  
20 correct?

21          MS. WYER:  Objection, Your Honor, relevance.

22          THE COURT:  Overruled.

23          THE WITNESS:  It is discretionary, but keep in mind  
24 they retrieve this information.  They use this data to  
25 retrieve their case -- their investigative cases.

1 Q. (By Mr. Trentadue) But the agent makes the  
2 decision and if the agent decides not to put in a  
3 descriptive word such as videotape or Murrah Building, it  
4 will not be found by search of the Universal Index, will it?

5 MS. WYER: Objection, Your Honor, this is irrelevant  
6 because here the only search in ACS that was done was for  
7 the term OKBOMB so which referred to the main file in  
8 Oklahoma City. So the question of what other search terms  
9 in ACS and the indices might be there is not relevant.

10 THE COURT: I think the question is whether these  
11 files should have been searched.

12 MS. WYER: Well, Your Honor, the main file where all  
13 such documents would be was located through the one search  
14 with one search term that was used.

15 THE COURT: Well --

16 MS. WYER: There was only one ACS search. Everything  
17 else was done through other -- one index search and all of  
18 the other searching was done through other means. So this  
19 is not relevant.

20 THE COURT: Well, I think it is relevant. The  
21 question is whether it was within the scope of what  
22 should have been searched. I think that is Mr. Trentadue's  
23 point.

24 MR. TRENTADUE: It is.

25 Q. (By Mr. Trentadue) So the one search you did was

1 just for the OKBOMB file?

2 A. Are you talking about me?

3 Q. Yes.

4 A. Or personally?

5 Q. Well, what was done in this case?

6 A. Um --

7 Q. Of UNI?

8 A. Well, UNI is part of ACS. There were other  
9 searches done of ACS. You're specifically talking about one  
10 of the components which is UNI. Um, there are three  
11 components and we did use ICM to search for responsive  
12 material as well as the ZyIndex that you have referenced  
13 here as well as the evidence database. We did multiple  
14 searches. While you're suggesting that we didn't search but  
15 the term tape or whatever term it was that you used I  
16 believe it was tape or video to suggest that -- that we  
17 didn't find what was responsive based on searching only UNI,  
18 that is not the case here. We did multiple searches of the  
19 various databases.

20 Q And we'll talk about that. Are you familiar with  
21 the term search slip?

22 A. Correct, there are search slips.

23 Q. And actually the person who performs the search  
24 has a search slip which tells what the search you're going  
25 to conduct, correct?

1           A.    That is a practice at RIDS.  Whether or not the  
2 field, I can't speak for the field, but --

3           Q.    But there is a search slip, it tells what  
4 searches were done, correct?

5           A.    At our location.  I can only speak for our  
6 location, yes, sir.

7           Q.    And it tells what search terms were used?

8           A.    Which we have explained, yes.

9           Q.    And it says if there are any restrictions on the  
10 search it would indicate that too, wouldn't it?

11          A.    Restrictions?  We search based on the terms  
12 provided in the request.  So if you limited it to the date,  
13 then that would be a restriction.

14          Q.    But if there are other restrictions that would be  
15 reflected on the search term, wouldn't it?

16          A.    I don't know what you mean -- -

17          Q.    Search slip?

18          A.    I don't know what you mean by restriction other  
19 than like a cut off date or a specific event date.  I don't  
20 know what you mean by restriction.

21          Q.    But you say dates are one restriction that are  
22 reflected on the search slip?

23          A.    If we're speaking specifically for your request,  
24 we would limit based on the terms you provided and the date  
25 provided that you wanted information on.

1 Q. And I take it then you have a search slip for the  
2 search that was done at your location?

3 A. At the admin stage, correct.

4 Q. I don't recall seeing that ever being produced?

5 MS. WYER: Objection, Your Honor, relevance. There  
6 has been no discovery so no reason that that would be  
7 produced.

8 THE COURT: Well, maybe it should have been produced.  
9 If this would be a convenient place for us to take our mid  
10 morning break, Mr. Trentadue.

11 MR. TRENTADUE: Yes, sir. If we could have  
12 Mr. Gardner up here to give me a hand. I can move a lot  
13 faster if I can get my system working. It works from the  
14 table.

15 THE COURT: Let's take a 15 minute break so we can  
16 solve this problem.

17 MR. TRENTADUE: Yes, sir.

18 (Recess.)

19 THE COURT: We are back in Trentadue versus the FBI.  
20 Mr. Trentadue, you may continue.

21 MR. TRENTADUE: Yes, Your Honor.

22 Q. (By Mr. Trentadue) Ms. Mitchell, if you would  
23 look at the blue binder, Exhibit 54. That is Mr. Hardy's  
24 Third Supplemental Declaration filed in this case.

25 A. Yes, sir.

1 Q. You have reviewed that, haven't you, ma'am?

2 A. Reviewed?

3 Q. Looked at it?

4 A. Yes.

5 Q. Read it?

6 A. Yes, I didn't hear you, sorry.

7 Q. In fact, I think he has filed six, I think,  
8 declarations?

9 A. That is correct.

10 Q. And you have looked at all of those and reviewed  
11 them?

12 A. That is right.

13 Q. I'm sorry, I couldn't hear you.

14 A. Correct.

15 Q. Correct. And on page -- in Exhibit 54, if you  
16 look at 54.10, it will be page -- it will be Page 10  
17 Paragraph 20. Mr. Hardy says in that paragraph, having  
18 reviewed all of the plaintiff's filings in the case, I  
19 continue to attest that all locations likely to contain  
20 information responsive to plaintiff's FOIA request have been  
21 searched and all responsive information that was located  
22 through the searches have been provided to the plaintiff.  
23 Mr. Hardy said that, didn't he?

24 A. Yes.

25 Q. And he goes on to say on Page 10-11, he says, I

1 am unaware of the existence or likely location of additional  
2 -- likely location of additional tapes responsive to  
3 plaintiff's FOIA request including tapes from the Murrah  
4 building or any additional Hanger tapes other than the tape  
5 that plaintiff already received and do not know of anyone  
6 else -- of anyone who would know where additional tapes  
7 would be located?

8 A. Yes.

9 Q. And Mr. Hardy said that?

10 A. That is what is written, yes.

11 Q. Now if you would look at Plaintiff's Exhibit 40?

12 THE COURT: Do you want PX -- Plaintiff's Exhibit 54  
13 received into evidence?

14 MR. TRENTADUE: I beg your pardon?

15 THE COURT: Do you want Plaintiff's Exhibit 54  
16 received into evidence?

17 MR. TRENTADUE: No, sir. I would offer the portions I  
18 have read, Your Honor, of the exhibit, but not the entire  
19 Exhibit 54.

20 Q. (By Mr. Trentadue) And this is a lead control  
21 number out of the OKBOMB case. Down at the bottom it talks  
22 in terms of videotapes being kept at the Washington  
23 Metropolitan Field Office, correct?

24 A. It mentions the field, yes.

25 Q. Okay. Did you make any inquiry of the Washington



1 Metropolitan Field Office?

2 A. No, sir.

3 Q. Do you have any understanding why they would have  
4 tapes in the bombing case in Oklahoma at the Washington  
5 Metropolitan Field Office?

6 A. Again, all of the material would have been sent  
7 to the field, Oklahoma City that is.

8 MR. TRENTADUE: Move to strike as nonresponsive.

9 Q. (By Mr. Trentadue) Ma'am, my question was would  
10 you have any understanding why they would have had the tape  
11 there?

12 A. No.

13 MS. WYER: Objection, lack of foundation, Your Honor.

14 THE COURT: I'm going to strike her previous answer  
15 and I'll -- because there has been no foundation for her  
16 having personal knowledge of that. And as to the second  
17 objection, as to the objection, I'm going to overrule that.  
18 She can be asked whether she has some understanding.

19 Q. (By Mr. Trentadue) Do you have an understanding  
20 why they would keep a tape in the Washington Metropolitan  
21 Field Office?

22 A. No.

23 MR. TRENTADUE: Ma'am, if you would look at  
24 Exhibit 10.

25 THE COURT: Do you want Exhibit 40 to be received as a

1 part of the record?

2 MR. TRENTADUE: Yes, sir.

3 THE COURT: Any objection?

4 MS. WYER: Yes, Your Honor, relevance. This document  
5 refers to something that has nothing to do with the  
6 Plaintiff's FOIA request.

7 THE COURT: It has to do with whether or not there  
8 were locations that should be reasonably searched.

9 MS. WYER: This document does not have anything to do  
10 with that, Your Honor.

11 MR. TRENTADUE: I disagree, Your Honor. Apparently  
12 they had a tape that was important enough to keep in the  
13 Washington Metropolitan Field Office.

14 MS. WYER: There is nothing on the face of that  
15 document that identifies it as potentially responsive to the  
16 Plaintiff's FOIA request, Your Honor.

17 THE COURT: The document will be received. Objection  
18 is overruled.

19 (Whereupon, Plaintiff's Exhibit 40 was received  
20 into evidence.)

21 Q. (By Mr. Trentadue) Exhibit 10 is Mr. Hardy's  
22 First Declaration in this case. You read that too, didn't  
23 you, ma'am?

24 A. Yes, sir.

25 Q. Now, if you look at Page 13, in Paragraph 35

1 Mr. Hardy describes the search terms used in the ZyIndex  
2 System, doesn't he, ma'am?

3 A. The ZyIndex, yes.

4 Q. ZyIndex. And among others he says Murrah Federal  
5 Building, Journal Record Building, Regency Tower Apartment  
6 Building, Southwest Bell Building, YMCA Building, Ryder  
7 Truck, Hanger, surveillance, video, tape and camera?

8 A. Yes, sir.

9 Q. And it is your understanding that these were the  
10 search terms used on the ZyIndex, correct?

11 A. Speaking of Zy, correct.

12 Q. Yeah. You don't have any personal knowledge of  
13 that, but it is your understanding these were the terms that  
14 were used, correct?

15 A. I do have personal knowledge because I  
16 coordinated the searches with Linda Vernon.

17 Q. Okay. And fair to say that using these terms  
18 would have produced in the ZyIndex every document that  
19 contained one of these terms?

20 A. In Zy.

21 Q. Yes, sir?

22 A. ZyIndex would locate documents, but not the chain  
23 of custody.

24 Q. No, but I mean it would come up with documents  
25 that said any document that had used Murrah Building would

1 be -- it is a text based searchable database, isn't it?

2 A. Yes.

3 Q. So every document if you wanted to know every  
4 document that said Murrah Building, it would produce it?

5 A. We're talking OKBOMB.

6 Q. Yes.

7 A. Yes, ZyIndex was used for the Oklahoma City  
8 investigation.

9 Q. And they use them for other major cases too,  
10 don't they, it is a stand-alone for each major case?

11 A. Not each, no.

12 Q. Okay. But in OKBOMB they used it?

13 A. In OKBOMB they used it.

14 Q. Now, would the ECF allow you to search all of the  
15 records in the FBI in that system with one search or is it  
16 case specific?

17 A. No, you would have to enter, just as we did here  
18 for the ZyIndex. You couldn't search, you couldn't add  
19 connectors to all of these terms and do one search.

20 Q. No, what I mean is the ZyIndex we're talking  
21 about here searched the OKBOMB records, correct?

22 A. That is correct.

23 Q. Would the ECF -- I think that is what it was  
24 called.

25 A. ECF.

1 Q. Would a search in that search all files?

2 A. Um, no, because of the date that ACS was  
3 implemented was after OKBOMB.

4 Q. That was a poor question. I meant to ask you, so  
5 OKBOMB materials would not be in the ECF system?

6 A. Some but not all.

7 Q. Okay. But when you search ECF, would a search  
8 search other cases other than OKBOMB?

9 A. In ECF, if you did a generic term is that what  
10 you --

11 Q. Yes?

12 A. If there was uploadable text, it could find, it  
13 is possible.

14 Q. It is a text based search though, isn't it?

15 A. That is correct.

16 Q. But it contains all of the documents that are  
17 uploaded into the ECF from investigations could be searched  
18 with a text base search of ECF?

19 A. If it was uploaded, if there was text based --

20 Q. Search?

21 A. -- search.

22 Q. Yes.

23 A. Uh-huh (affirmative).

24 Q. And so if you had, for example, misplaced a  
25 document, misfiled it, a place to look for it might be ECF,

1 wouldn't it? If it wasn't filed in a particular file it  
2 should have been?

3 A. Again, the ECF is only as good as the information  
4 that is in there. If it wasn't uploaded, you wouldn't find  
5 it --

6 Q. But if it was --

7 A. -- through the ECF search.

8 Q. But if it was uploaded, you would find it  
9 certainly, wouldn't you?

10 A. You could locate it that way. If it -- if it  
11 didn't predate the implement -- when ACS was implemented and  
12 yes if searched, if text was available.

13 Q. Now, when you do a search and we would offer Your  
14 Honor Paragraph 35 of Mr. Hardy's declaration from  
15 Exhibit 10?

16 THE COURT: Any objection to receiving just that  
17 paragraph?

18 MS. WYER: No, Your Honor.

19 THE COURT: That paragraph will be received.

20 (Whereupon, Paragraph 35 of Plaintiff's Exhibit 10 was  
21 received into evidence.)

22 Q. (By Mr. Trentadue) Now, when you do a search for  
23 this, ma'am, it is going to produce a lot of documents using  
24 these terms, isn't it?

25 A. I have never seen ZyIndex to know what the list

1 or hits. I mean I don't know what it looks like.

2 Q. I guess it would depend on how many there were,  
3 wouldn't it?

4 A. That is correct.

5 Q. But it will produce some responsive documents and  
6 some nonresponsive, correct?

7 A. Depending on the hits, correct.

8 Q. And somebody has to review the documents to see  
9 whether it is responsive to my request or it is not  
10 responsive, correct?

11 A. Yes.

12 Q. Who did that review in this case?

13 A. We reached out to the field so that would -- the  
14 field would be the one that would know the answer. I  
15 wouldn't.

16 Q. So you don't know how many documents are produced  
17 and you don't know what the review consisted of?

18 MS. WYER: Objection, Your Honor, confusing. Is this  
19 an ECF search he is talking about?

20 THE COURT: Clarify your question.

21 Q. (By Mr. Trentadue) The ZyIndex search was done  
22 in this case?

23 A. Zy was done.

24 Q. And it was done using these terms in  
25 Paragraph 35?

1 A. Correct.

2 Q. I'm assuming, therefore, that there were  
3 documents produced that may not have been responsive to my  
4 FOIA request?

5 A. Hits, not documents produced, but hits, potential  
6 hits.

7 Q. Potential hits. And somebody would have to  
8 review the documents reflected by those hits to see if they  
9 fell within the scope of my request, correct?

10 A. Again, I have not used Zy. But if it is similar  
11 to ACS using the UNI and you get the hits, that is correct.

12 Q. Do you know if Mr. Hardy made that review?

13 A. He made the review of Zy -- of the ZyIndex hits.

14 Q. For responsive and nonresponsive documents?

15 A. Um, no.

16 Q. You know or you don't know?

17 A. No, he would not have performed that search.

18 Again, all of the information is at the field.

19 Q. I'm not saying he did the search, I'm saying  
20 would they have sent the documents to him and said these are  
21 what we found, you decide what is responsive and what is not  
22 responsive?

23 A. Again, the file is massive. Potentially these  
24 potential hits could produce -- I mean I would be guessing  
25 how many pages. They would not send the material to us.



1 They would review it at the field.

2 Q. Well, who would review -- exemptions were claimed  
3 in this case?

4 A. Well, you're talking about the 200 pages that  
5 were produced.

6 Q. Yes. Yes.

7 A. That is different.

8 Q. Well, a hit we're talking about reflects a page,  
9 doesn't it?

10 A. The hit could be -- could be -- the hit list from  
11 the Zy, we're still talking Zy.

12 Q. Yes.

13 A. The list may -- if we're doing a generic search  
14 such as what is in 35 for surveillance or video or tape, the  
15 list could generate a massive amount of material that the  
16 field would have to review to determine if it was responsive  
17 to your request.

18 Q. Okay. And but also with respect to -- out of  
19 that material, 160 pages were determined to be responsive?

20 A. 200 pages were determined to be.

21 Q. But 160 reflecting the FBI's own records?

22 A. 164, correct.

23 Q. 164, correct. And so those were the ones that  
24 were found using these generic search terms?

25 A. Not ZyIndex alone.

1 Q. But they were found?

2 MS. WYER: Objection, Your Honor. Under 403 this is  
3 wasteful. We're calling the witness who actually performed  
4 the ZyIndex search. This witness did not perform that  
5 search.

6 MR. TRENTADUE: I gathered that. I'm saying you told  
7 me Mr. Hardy doesn't, but also exemptions were declared  
8 as --

9 THE COURT: Let me rule on the objection. The  
10 objection is overruled.

11 Q. (By Mr. Trentadue) The exemptions were claimed  
12 for 164 of those, I mean, for a number of those documents,  
13 correct?

14 A. Yes. That is done at our location through the  
15 FOIA unit.

16 Q. Okay. And so your location blacked out some of  
17 the names for personal information reasons?

18 A. Correct.

19 Q. And some documents you withheld in their  
20 entirety?

21 A. Only those that were referred and you later got  
22 those.

23 Q. I'm saying but whoever made the determination as  
24 to responsiveness that wasn't you, that is all I wanted to  
25 make clear on that. Now --

1 THE COURT: Let her answer the question. Is that  
2 correct?

3 THE WITNESS: No, that is not correct. When the  
4 material came to me I determined -- I agreed that the  
5 material she sent related to your request.

6 Q. (By Mr. Trentadue) Okay. So you did your own  
7 independent review?

8 A. I looked at the material. That is my job.

9 Q. Okay. That is what I wasn't sure of, ma'am. Now  
10 Mr. Hardy in his declaration has a number of exhibits  
11 attached. And if you see at the top of the page up here,  
12 for example, the page we're looking at here now, says  
13 Page 13 of 96?

14 A. Yes, sir, the pacer, the docket.

15 Q. Yes. And look at Page 37 of 96?

16 A. The cover sheet.

17 Q. Yes. And that is Exhibit H, right?

18 A. H.

19 Q. And if you turn around to the next page on 38,  
20 that is a letter?

21 A. A letter.

22 Q. That I wrote to Ms. Wyer, your counsel, correct?

23 A. Correct, DOJ counsel.

24 Q. Yes. And it is regarding the Hanger videotape?

25 A. Yes, sir.

1 MR. TRENTADUE: And the Hanger videotape is Exhibit 1,  
2 Your Honor. We would offer that.

3 THE COURT: Any objection to Exhibit 1?

4 MS. WYER: Yes, Your Honor, relevance. The tape is  
5 not -- he got the tape so the content of the tape is not  
6 relevant.

7 MR. TRENTADUE: Your Honor, I didn't get the tape I  
8 requested so I think it is very much relevant.

9 THE COURT: Is there any dispute that this is, in  
10 fact, the tape that was provided?

11 MR. TRENTADUE: No, sir, no dispute to the fact that  
12 is the tape.

13 THE COURT: Ms. Wyer, any dispute that this was the  
14 tape that was provided?

15 MS. WYER: I have not looked at the tape, Your Honor.  
16 If the plaintiff represents to the court that this is the  
17 tape that he received from the FBI we will accept that.

18 THE COURT: Objection is overruled. The document is  
19 received.

20 (Whereupon, Plaintiff's Exhibit 1 was received  
21 into evidence.)

22 Q. (By Mr. Trentadue) Now, you reviewed that tape  
23 didn't you, ma'am?

24 A. No, sir.

25 Q. Okay, you didn't. I'm afraid to do this, Your

1 Honor, but I'm going to try to play Exhibit 1, just a small  
2 portion of it.

3 (Whereupon, Plaintiff's Exhibit 1 was played.)

4 Q. (By Mr. Trentadue) I asked for the tape, ma'am,  
5 of the arrest of Timothy McVeigh, didn't I? The videotape  
6 of Trooper Hanger's dash cam recorder in that letter?

7 A. In this letter?

8 Q. I'm referring to the tape -- that was part of my  
9 FOIA request was the tape of Mr. McVeigh's arrest?

10 A. That is what I was going to look at.

11 Q. This doesn't show Mr. McVeigh's arrest, does it?

12 A. No, it doesn't show an individual but that's --

13 Q. It shows an empty car on the side of the road,  
14 correct?

15 A. It does, but that is -- I don't see an  
16 individual. The individual, I would be speculating as to  
17 where the individual is, maybe he is already arrested.

18 (Whereupon, the video ended.)

19 Q. (By Mr. Trentadue) But I am writing back this  
20 letter April 10 -- April 9, 2009, I'm writing back to your  
21 counsel saying, look, I got the tape, and I said I include  
22 an attached story from May 12th, 1995, Houston Chronicle,  
23 where they describe a truck being pulled over with McVeigh  
24 in the course of that arrest, don't I?

25 A. You have an attachment, that is correct.

1 Q. I even include the article, don't I?

2 A. Yes.

3 Q. And I quote, and the article says, "Law  
4 enforcement sources said Thursday night that Colbern" the  
5 guy they said that was stopped with McVeigh or following  
6 McVeigh, "was identified through his brown pickup. It was  
7 captured, by chance, on video taken from the state trooper's  
8 car that stopped Timothy McVeigh for speeding only  
9 80 minutes after the blast."

10 "An automatic camera in the car of Trooper Charles  
11 Hanger was taping the arrest of McVeigh. In the background  
12 was the image of the pickup, which also pulled over while  
13 McVeigh was being questioned."

14 Now, I sent that article to your counsel but I'm  
15 assuming it must have been forwarded to your office because  
16 Mr. Hardy includes it in his deposition as exhibit -- or his  
17 declaration as Exhibit H, doesn't he?

18 A. That is correct.

19 MR. TRENTADUE: We would offer Exhibit H, Your Honor.

20 MS. WYER: Objection, Your Honor, hearsay.

21 MR. TRENTADUE: It is not being offered for the truth  
22 of the matter, Your Honor, only that the information was  
23 conveyed.

24 THE COURT: It is received for that purpose. The  
25 objection is overruled.

1 MR. TRENTADUE: It is 10, Mr. Hardy's Exhibit 10  
2 contains a number of exhibits attached as --

3 THE COURT: It is Exhibit H to Exhibit 10. Okay.  
4 Exhibit H to Exhibit 10 is received.

5 (Whereupon, Exhibit H to Exhibit 10 was received  
6 into evidence.)

7 Q. (By Mr. Trentadue) Do you know what, if  
8 anything, was done to follow up on that story to see if it  
9 was true and who that source of the information was?

10 A. I think I previously indicated that after every  
11 inquiry you made I reached out to the field. We did the  
12 search, we located the OHP which stands for the Oklahoma  
13 Highway Patrol that was indicated on the DVD that you just  
14 played that is what we received. That was the only copy  
15 that we had that we provided.

16 Q. And that was Exhibit 213, wasn't it?

17 A. I don't remember what exhibit.

18 Q. If we look at that one in the binder, maybe this  
19 will save you having to look back, it says the Defendant's  
20 Exhibit 213, chart Oklahoma Highway Patrol Hanger, one  
21 videotape?

22 A. That is what we provided, yes.

23 Q. And this is -- and the second page on the bottom  
24 it says 54, that is copy of the videotape that you received  
25 from Oklahoma?

1 A. That is the copy, yes.

2 Q. And that is a DVD, isn't it, ma'am?

3 A. It is a DVD.

4 Q. And when you look at all of the other tapes you  
5 received in that same period of time, such as the next page,  
6 they are VHSs, aren't they?

7 A. They are.

8 Q. And then if you would turn to Exhibit K, in  
9 Mr. Hardy's declarations which is on Page 48 at the top, if  
10 you turn to the next page it is letter of April 26, 2009.  
11 It is again addressed to your counsel. And on the second  
12 page I ask counsel I say, next, I have a question about the  
13 videotape from the dash board camera in Oklahoma Patrolman  
14 Hanger's car that was taken on the morning of April 19,  
15 1995, the day he was arrested -- he arrested Tim McVeigh.  
16 Is the FBI willing to send the original videotape to Salt  
17 Lake City so that I can view it at either your office or the  
18 FBI Field Office -- Salt Lake City Field Office?

19 A. That is what the letter says.

20 MR. TRENTADUE: Your Honor, I would offer Exhibit K to  
21 Mr. Hardy's declaration which is Exhibit 10.

22 MS. WYER: For what purpose is this being offered? It  
23 is not clear, Your Honor.

24 MR. TRENTADUE: Because, Your Honor, I will tie --  
25 connect it up but it will show through a series of



1 correspondence that there was never any assertions made that  
2 they didn't have the original tape. There was never any  
3 assertions made that anything had happened to that tape in  
4 the correspondence with me.

5 THE COURT: Any objection for that purpose?

6 MS. WYER: I am not sure I understand.

7 THE COURT: His explanation was that it is offered for  
8 showing that a request was made and no search was made to  
9 follow up on the request.

10 MS. WYER: The word original is ambiguous because I  
11 don't know whether it means the original --

12 THE COURT: That is argument. That is argument. I'm  
13 going to overrule the objection and that exhibit is  
14 received.

15 (Whereupon, Exhibit K to Exhibit 10 was received  
16 into evidence.)

17 Q. (By Mr. Trentadue) Ma'am, if you would turn to  
18 Exhibit L now which is Page 51. And if you turn to the next  
19 page this is a letter received back from Ms. Wyer. If you  
20 look at the paragraph I have highlighted near the bottom it  
21 says, "In regard to your request to review the original of  
22 the videotape that was previously sent to you, that simply  
23 goes far beyond the scope of anything that FOIA requires.  
24 The FBI has previously indicated that the copy you received  
25 is a complete and unedited copy of the videotape."

1           A.    That is what it says, that is correct.

2           MR. TRENTADUE:   And move to strike the last response  
3 as nonresponsive, Your Honor.

4           THE COURT:   Which part do you want stricken?

5           MR. TRENTADUE:   I read to you the section that says  
6 the tape was -- I think it was sent -- let me ask you a  
7 question, ma'am.

8           Q.    (By Mr. Trentadue) You read that language that I  
9 quoted.  Is there anything in there that says that the FBI  
10 didn't have the original videotape?

11          A.    It does not say anything about an original.

12          MR. TRENTADUE:   Okay.  We offer Exhibit L to  
13 Mr. Hardy's Declaration Exhibit 10.

14          THE COURT:   Any objection?

15          MS. WYER:   Yes, Your Honor, object relevance.  This is  
16 something that I wrote based on my understanding.  It  
17 doesn't represent anything about whether the FBI had an  
18 original tape or not.  This is whether the plaintiff could  
19 view the tape, the tape from which the copy was made.

20          THE COURT:   Overruled.  Exhibit L to Exhibit 10 is  
21 received.

22                 (Whereupon, Exhibit L to Exhibit 10 was  
23                 received into evidence.)

24          Q.    (By Mr. Trentadue)  If you look at Exhibit M,  
25 ma'am, which is Page 53, and I am writing this as of May 8,

1 2009, letter and I said, "I would, however, ask your client  
2 to reconsider its position on the Hanger videotape. Toward  
3 that end, I have enclosed another newspaper story about the  
4 contents of that tape, including the presence of Steven  
5 Colbern's truck in the tape. This story is about the  
6 initial appearance of Colbern in Federal Court in Arizona."

7 If you turnover several pages, ma'am, there is the  
8 article and the last page I think is highlighted, let me put  
9 the highlight in for you. And it says, "Authorities call --  
10 said Colbern owns the brown pickup that was caught on an  
11 Oklahoma Trooper's video camera when McVeigh, the prime  
12 subject in the April 19th bombing, was stopped on a traffic  
13 violation 90 minutes after the blast."

14 Do you know what, if anything, was done to follow up  
15 on this additional information about the existence -- about  
16 the contents of the tape that I had received?

17 A. I think I have answered this before.

18 MR. TRENTADUE: Okay. Move to admit, Your Honor,  
19 Exhibit M to Mr. Hardy's declaration which is Plaintiff's  
20 Exhibit 10.

21 MS. WYER: We object to this on grounds of hearsay,  
22 Your Honor. The plaintiff has just represented that he is  
23 representing the content of this article as the truth.

24 MR. TRENTADUE: No I'm not, Your Honor. I have  
25 offered it for the limited admission that this isn't about

1 the truth of this matter. I'm offering it as non hearsay  
2 that the statements were made and the information was  
3 communicated to the plaintiff.

4 THE COURT: The objection is overruled. It is  
5 received for that purpose.

6 (Whereupon, Exhibit M to Exhibit 10 was received  
7 into evidence.)

8 Q. (By Mr. Trentadue) If you look at Exhibit R,  
9 ma'am, which is Page 71. And again, I'm writing to follow  
10 up as October 7, 2009, letter about the surveillance tapes  
11 and I am particularly asking about my request for the  
12 surveillance tape that government documents describes the  
13 Ryder Truck pulling up to the federal building and then  
14 pausing seven to ten seconds before resuming into a slot in  
15 front of the building. The truck detonates three minutes  
16 and six seconds after the suspects exited the truck. And I  
17 also attached to that, ma'am, the timeline portions where  
18 that testimony -- where those statements are made. Do you  
19 see that, ma'am? It will be on the Page 77 and Page 78?

20 A. Yes.

21 MS. TRENTADUE: And this appears in Mr. Hardy's  
22 declaration as Exhibit R. I would offer this again, Your  
23 Honor, not for the truth of the matter but just for the fact  
24 that the information was communicated to Mr. Hardy.

25 THE COURT: Any objection?

1 MS. WYER: Its relevance, Your Honor, because it is  
2 not relevant unless it is true and even then it would not be  
3 relevant.

4 THE COURT: Overruled. The document is received.

5 (Whereupon, Exhibit R to Exhibit 10  
6 was received into evidence.)

7 Q. (By Mr. Trentadue) Now, if you would look at  
8 Exhibit 20, ma'am. Well actually look, if you would, look  
9 at Page 85 of Mr. Hardy's declaration. It refers to my  
10 letter to Ms. Wyer of January 22nd, 2010, correct?

11 A. What was the question?

12 Q. I didn't mean to direct you out of Mr. Hardy's  
13 declaration. If you would look at page -- keep those two in  
14 front of you. If you look at Page 85 of Mr. Hardy's  
15 declaration which was Exhibit 10?

16 A. Yes.

17 Q. Okay. And that refers to a January 22nd, 2010  
18 letter I'm writing to them.

19 A. Right. The letter -- the date was incorrect. I  
20 had written it on there.

21 Q. And in the last paragraph I reference the fact  
22 that I'm enclosing photographs depicting the cameras that  
23 were in place on the Murrah Building that morning and then  
24 missing from the Murrah Building surveillance camera later  
25 that morning, correct? Mr. Hardy's -- that is Exhibit P to

1 Mr. Hardy's declaration. He doesn't include the  
2 photographs. Now if you look at Exhibit 20, in my other  
3 exhibits, if you look through there, there is a series of  
4 paragraphs attached; aren't there?

5 A. Attached to 20?

6 Q. Yes.

7 A. Uh-huh (affirmative).

8 Q. And A, B and C?

9 A. Yes, sir.

10 MR. TRENTADUE: Your Honor, we would offer Exhibit 20.  
11 Again, not for the purpose of the truth of the matters  
12 asserted therein, but just for the fact that this  
13 information was communicated to Mr. Hardy.

14 THE COURT: Ms. Wyer?

15 MS. WYER: A relevance objection and we dispute the  
16 authenticity of the photographs, the time that they're taken  
17 is not identified and the location.

18 THE COURT: Again, they're being offered for the  
19 purpose that they were communicated to the -- to the FBI for  
20 -- to follow up on the request. They're received for that  
21 reason. Objection is overruled.

22 (Whereupon, Plaintiff's Exhibit 20 was received  
23 into evidence.)

24 Q. (By Mr. Trentadue) Now, if you would look at  
25 Exhibit 27, ma'am, and this is an e-mail I received from

1 Ms. Wyer saying -- dated February 2nd, 2010, I have  
2 forwarded this and your earlier letter to the FBI. I  
3 understand from them that it may take a while for them to  
4 research these issues. I will let you know when I receive a  
5 response.

6 We would offer Exhibit 27, Your Honor. Or plaintiff  
7 would offer Exhibit 27.

8 THE COURT: Any objection?

9 MS. WYER: Yes, Your Honor, relevance.

10 MR. TRENTADUE: It makes clear that the information I  
11 am sending is being communicated to Mr. Hardy back at the  
12 FOIA Section of the FBI.

13 THE COURT: Objection is overruled. It is received.

14 (Whereupon, Plaintiff's Exhibit 27 was received  
15 into evidence.)

16 Q. (By Mr. Trentadue) And ma'am, if you would look  
17 at Exhibit 28, now. This is a January 23rd, 2012, letter  
18 that I sent to Ms. Wyer and it is talking about the  
19 videotapes I received from the Regency Tower. And  
20 specifically I am telling her that the tape I received, or  
21 tapes I received, do not match the testimony given by  
22 Mr. Hersley at the McVeigh preliminary hearing. And then I  
23 attach a copy of the portions of that testimony.

24 A. That is what the letter says but if you're asking  
25 me about Hersley's testimony, I don't know.

1 Q. I mean it is attached, correct?

2 A. There are attachments.

3 MR. TRENTADUE: Your Honor, I would offer Exhibit 28.  
4 Again, not for the truth of the matters asserted, just for  
5 the fact that the information was communicated to counsel  
6 for the FBI.

7 MS. WYER: Objection, Your Honor. We requested that  
8 the plaintiff provide a complete copy of this transcript and  
9 he did not do so. If he wants to do that we would --

10 THE COURT: Is this a complete copy of what was  
11 provided?

12 MR. TRENTADUE: No, sir, I don't have a complete copy.

13 THE COURT: Listen to my question. Is this the  
14 complete copy of what you provided to the FBI?

15 MR. TRENTADUE: Yes.

16 THE COURT: Objection is overruled. It is received.

17 (Whereupon, Plaintiff's Exhibit 28 was received  
18 into evidence.)

19 Q. (By Mr. Trentadue) If you would look at  
20 Exhibit 29, ma'am, and this is Ms. Wyer writing back to me  
21 and says she sent on my letter to the FBI, correct?

22 A. I am sorry it is saying what?

23 Q. She is writing -- hold on a second. She says in  
24 the first paragraph, I am writing to let you know that I  
25 forwarded your letter of January 23rd, 2012, to the FBI and



1 asked them about the photographs and the Regency Tower  
2 videotapes that you referenced. I have been informed that,  
3 as indicated in the testimony of Special Agent Hersley that  
4 you attached to your letter, still photographs were made  
5 from videotape footage from a surveillance camera at the  
6 Regency Tower Building in Oklahoma City, period."

7 A. It says that.

8 MR. TRENTADUE: We would offer exhibit -- I would  
9 offer Exhibit 29, Your Honor.

10 THE COURT: Any objection?

11 MS. WYER: No objection.

12 THE COURT: Exhibit 29 is received.

13 (Whereupon, Plaintiff's Exhibit 29 was received  
14 into evidence.)

15 Q. (By Mr. Trentadue) And Exhibit 30, ma'am. If  
16 you will turn to the third page. At the bottom you will see  
17 where I am writing again to complain about the videotapes  
18 that I have received from the Regency Tower didn't quite  
19 comport with Mr. Hersley's testimony, correct? If you  
20 follow it over to the next page, too, Page 4. Plaintiff  
21 would offer Exhibit 27, Your Honor.

22 THE COURT: Any objection to 27.

23 MS. WYER: Relevance, Your Honor.

24 MR. TRENTADUE: It is just to show that this -- my  
25 objections are being communicated, Your Honor, to the FBI.

1 THE COURT: Actually I said 27 it is actually  
2 Plaintiff's Exhibit 30.

3 MR. TRENTADUE: Plaintiff's Exhibit 30, I'm sorry.  
4 That is what it is again showing, a communication.

5 THE COURT: Okay. It is received for that purpose.  
6 Objection is overruled.

7 (Whereupon, Plaintiff's Exhibit 30 was received  
8 into evidence.)

9 Q. (By Mr. Trentadue) Now Exhibit 31, ma'am. And  
10 this is a February 1 letter I wrote to Ms. Wyer, excuse me,  
11 Ms. Wyer wrote to me and she says in that second sentence,  
12 "In regard to your inquiry concerning the videotape footage  
13 from which the photographs mentioned in Special Agent  
14 Hersley's testimony were produced, the FBI has indicated to  
15 me that this footage was provided to you in the release that  
16 accompanied Mr. Hardy's letter of July 16, 2009, in the DVD  
17 labeled 1B6 -- 1B260 Regency Tower 4/19/95 Q5. The FBI has  
18 also asked me to relay to you that the photographs mentioned  
19 by Special Agent Hersley bear time stamps indicating that  
20 the specific time period of that footage, from which the  
21 photographs were produced, is April 19, 1995 between  
22 08:56:53 seconds and 08:57.15."

23 Your Honor, I would offer Plaintiff's Exhibit 31.

24 MS. WYER: No objection.

25 THE COURT: Plaintiff's Exhibit 31 is received.

1 (Whereupon, Plaintiff's Exhibit 31 was received  
2 into evidence.)

3 Q. (By Mr. Trentadue) Then, ma'am, if you would  
4 look at Exhibit 32, this is a letter I immediately write  
5 back to Ms. Wyer February 1, 2012, and I say, "I am writing  
6 to follow up with you both on Ms. Wyer's letter to me of  
7 February 1, 2012, regarding the Regency Tower surveillance  
8 camera videotapes. I have DVD 1B260 to which Ms. Wyer  
9 refers to in her letter, but the film on that DVD is from  
10 the surveillance camera located in the lobby of the Regency  
11 Tower facing the entrance. Yes, in a blur, it does show the  
12 Ryder Truck passing at the time indicated in Ms. Wyer's  
13 letter." Then I go on to include a photograph of the  
14 Regency Tower in the background with what appears to be a  
15 surveillance camera on it and then following up on our  
16 earlier conversations. Plaintiff would offer Exhibit 32,  
17 Your Honor.

18 MS. WYER: Relevance, Your Honor.

19 MR. TRENTADUE: Again, Your Honor, I'm offering it not  
20 for the truth, but for the fact that we're communicating all  
21 of this information to Mr. Hardy through his counsel.

22 THE COURT: The objection is overruled.

23 MS. WYER: And also, Your Honor, this actually  
24 mischaracterizes Agent Hersley's testimony because Agent  
25 Hersley did not refer to any exterior camera as a source of

1 photographs.

2 THE COURT: Well, the document says what it says. You  
3 can argue how the FBI chose to respond to the letter, but it  
4 is received for the purposes indicated.

5 (Whereupon, Plaintiff's Exhibit 32 was received  
6 into evidence.)

7 Q. (By Mr. Trentadue) Now if we could look at  
8 Defense Exhibit 240. Do you have that, ma'am?

9 A. I don't have it. You have got it on the screen  
10 though.

11 Q. It is a laboratory report that counsel has  
12 submitted to defense exhibit. I assume, I don't want to  
13 mischaracterize your testimony, but I assume that -- I  
14 understood that you reviewed the documents that are the  
15 exhibits at this trial here today, too, didn't you?

16 A. Um, yes, most of them.

17 Q. Yes. And this purports to be a laboratory report  
18 concerning the Regency Tower videotape?

19 A. Is it just one page?

20 Q. No, there is several pages to it if you turn --

21 A. On the first page I don't see --

22 Q. In the book it will be easier to see. But I'll  
23 go to the second page which is what is of most interest to  
24 me. Midway down the page it is specimen Q5 which is what  
25 we're talking about. The FBI gives a Q number to evidence,

1 don't they, ma'am? Q5 -- that is how you identify different  
2 items of evidence?

3 A. I don't know if Q is the only -- I don't know  
4 much about that.

5 Q. This appears to be referring to the Q5 Regency  
6 tape which is the subject of my correspondence with  
7 Ms. Wyer. And it says, quote, "Specimen Q5 contained images  
8 of a truck with, quote, Ryder markings. The first video  
9 frame which depicted a full view of the truck reflected a  
10 time and date of 5:56:53 on 4/19/1995. The last video frame  
11 which depicted a view of the truck reflected a time and date  
12 of 8:57:16 on 4/19/95. The last video frame recorded on  
13 4/19/95 reflected a time of 9:00:21 seconds." We would  
14 offer Defendant's Exhibit 240, Your Honor.

15 MS. WYER: No objection.

16 THE COURT: Exhibit 240 is received.

17 (Whereupon, Defendant's Exhibit 240 was received  
18 into evidence.)

19 Q. (By Mr. Trentadue) Ma'am, if you look at  
20 Plaintiff's Exhibit 46, this was a declaration from Emanuel  
21 Johnson, a former FBI Agent, describing the FBI's evidence  
22 and record keeping procedures. You can see from the  
23 notations at the top it was filed of record in this case.

24 You recall that Mr. Hardy said he had reviewed all of  
25 the filings in this case. Is there any reason to believe

1 that he didn't review this one?

2 A. He has reviewed all of the filings.

3 MR. TRENTADUE: We would offer Exhibit 46, Your Honor.

4 MS. WYER: Objection, Your Honor, hearsay. This is a  
5 declaration that was filed in briefing as an exhibit. It is  
6 not something that the plaintiffs sent to the FBI as an  
7 inquiry so it cannot be admitted as evidence of something  
8 that he communicated to the FBI.

9 MR. TRENTADUE: I believe, Your Honor, I offer it  
10 again not for the truth, but for the fact that Mr. Johnson  
11 sets out these procedures and this information was obviously  
12 reviewed by Mr. Hardy and the issue is what if anything did  
13 Mr. Hardy do about that.

14 THE COURT: It is received. Objection is overruled.

15 (Whereupon, Plaintiff's Exhibit 46 was received  
16 into evidence.)

17 Q. (By Mr. Trentadue) Exhibit 47, ma'am. This is a  
18 Second Declaration of Mr. Johnson again filed of record in  
19 this case. The witness has testified that Mr. Hardy  
20 reviewed all of the filings. We would offer it again not  
21 for the truth of matter stated therein, but for the fact  
22 that it was communicated to Mr. Hardy and we would like to  
23 know what, if anything, Mr. Hardy did about that?

24 MS. WYER: Objection, Your Honor, hearsay. This  
25 document was submitted by plaintiff as a declaration in his

1 briefing to support his arguments and summary judgment  
2 proceedings. It was not -- did not call upon Mr. Hardy to  
3 do anything.

4 THE COURT: Your response to that?

5 MR. TRENTADUE: Yes, Your Honor. I think that the law  
6 requires Mr. Hardy to follow up on any potential leads or  
7 suggestive sources to look for any material that has been  
8 requested. Certainly when he is getting all this  
9 information and he has some duty with respect to doing that.

10 THE COURT: Okay. The objection is overruled. I will  
11 receive it. The weight of the import of the document will  
12 be based on what Mr. Hardy says about it.

13 MR. TRENTADUE: Yes, sir.

14 (Whereupon, Plaintiff's Exhibit 47 was received  
15 into evidence.)

16 Q. (By Mr. Trentadue) Exhibit 48. This is a  
17 declaration again filed of record in this case of  
18 Mr. Browning describing the events of the morning of  
19 April 19, 1995, including seeing the FBI take possession of  
20 the surveillance cameras on the Murrah Building filed of  
21 record. I would again offer this not for the truth of the  
22 matter but just for the fact that it was information that  
23 Mr. Hardy received, and we would like to know what if  
24 anything he did to follow up on this.

25 MS. WYER: Objection, Your Honor. This is not even a

1 question for the witness that he is asking. We object on  
2 grounds of hearsay again for the same reasons that we  
3 explained before this was provided in support of summary  
4 judgment arguments. It did not call upon Mr. Hardy to do  
5 anything in response.

6 THE COURT: The objection is overruled. The document  
7 is received. This doesn't seem to have anything to do with  
8 this witness, but I am going to receive it so we can move  
9 forward.

10 (Whereupon, Plaintiff's Exhibit 48 was received  
11 into evidence.)

12 MR. TRENTADUE: Let me check, Your Honor.

13 Q. (By Mr. Trentadue) If we could look at  
14 Exhibit 34. I think this has been offered into evidence.  
15 These are the documents, I believe, the 164 documents that  
16 the FBI provided to me and I think you said that you  
17 reviewed those -- those documents for responsiveness,  
18 correct, ma'am?

19 A. That is correct.

20 Q. And if we look at the bottom of the page there is  
21 a number. If we look at Page 5?

22 A. I'm sorry, Bates number five?

23 Q. It will be down at the bottom of the page, not at  
24 the top?

25 A. Bates number -- there is a --



1 Q. Bates number five, yes.

2 A. So it is a document dated 6/8/95.

3 Q. Yes.

4 A. Okay.

5 Q. Now, this is a lead sheet, one of the ones  
6 produced to me. Do you see down at the bottom, ma'am, there  
7 is a reference to it 174A OC-56120. That is the Oklahoma  
8 City bombing case number, isn't it, ma'am?

9 A. Main file, yes.

10 Q. Main file, yes. And then we talk about sub files  
11 the D-3413 refers to a sub file, doesn't it?

12 A. Correct.

13 Q. And these are entered chronologically, aren't  
14 they, in ascending order like the first entry in sub file D  
15 would have been one, that is called serials?

16 A. The serials.

17 MS. WYER: Objection, Your Honor, lack of foundation.

18 MR. TRENTADUE: Well, what do you understand the  
19 serial to be, ma'am?

20 THE WITNESS: A serial is a document that is added to  
21 the case file.

22 Q. (By Mr. Trentadue) And they do them in ascending  
23 order, don't they?

24 A. I don't know if they're always in date order. I  
25 don't know that they're chronological, but the numbering

1 serialized numbers are in order.

2 Q. Okay. So the first one in the file gets a one?

3 A. Well, you could -- you could have more than one I  
4 guess if you had sub files.

5 Q. I'm talking about sub files?

6 A. Sub files only?

7 Q. Yeah.

8 A. So one would be the first one.

9 Q. And then the second document entered would be  
10 two?

11 A. That is correct.

12 Q. And three and four and so on?

13 A. Correct.

14 Q. And this sub file, this document, deals with  
15 videotapes in the Oklahoma Post Office Building, for  
16 example, doesn't it?

17 A. The post office.

18 Q. And that is sub file D?

19 A. That is --

20 MS. WYER: Confusing, Your Honor.

21 THE COURT: I'm sorry, what is your objection?

22 MS. WYER: What is sub file D is a confusing question,  
23 Your Honor.

24 THE COURT: I'll sustain the objection. You clarify  
25 the question so we don't have any ambiguity in the record.

1 MR. TRENTADUE: Yes. Yes.

2 Q. (By Mr. Trentadue) The D number there refers to a  
3 sub file there?

4 A. Refers to a sub file.

5 Q. Yeah. And the number -- the number of this  
6 document in that file 3413?

7 A. That is correct.

8 Q. And if you look at the next page on six, this is  
9 another document related to the videotapes, and it is  
10 talking about the Southwestern Bell parking lots, security  
11 cameras. And if you look at the bottom it says, sub file  
12 D-652, correct, ma'am?

13 A. Yes, sir.

14 Q. And if you look at the date it was acquired, the  
15 investigation was, at the bottom, was -- it was dictated --  
16 the date of the transcription is at the top, that is May 4,  
17 '95, but if you look at the bottom it is the date of the  
18 investigation is April 23rd, '95?

19 A. Yes.

20 MR. TRENTADUE: Okay. And this is document number  
21 652.

22 MS. WYER: Objection relevance, Your Honor.

23 MR. TRENTADUE: Correct?

24 THE WITNESS: The serial -- the serial.

25 Q. (By Mr. Trentadue) The serial?

1 A. 652.

2 Q. In sub file D?

3 A. That is correct.

4 THE COURT: The objection is overruled.

5 Q. (By Mr. Trentadue) And if you look at Bates  
6 number 14, ma'am. Now this is a videotape and it is by the  
7 Kwik Stop in Norman, Oklahoma. That wasn't within the scope  
8 of my request, was it, ma'am?

9 A. Your original request asked for any and all  
10 material for a particular date. This document falls within  
11 that date.

12 Q. Okay. So then it talks about the VCR tape was  
13 placed in 1-B folder?

14 A. It says that.

15 Q. And 1-B folder is -- a B folder is where the  
16 physical evidence is stored, isn't it, ma'am?

17 A. That is my understanding. But again, I am not  
18 involved in the case.

19 Q. You may not be the person to ask about that. And  
20 then when you look at the bottom, it says that the  
21 investigation was on April 21st, '95, and this document is  
22 sub file D and what is the number, serial number?

23 A. Eight?

24 Q. Eight. If I could have a moment, Your Honor, I  
25 might be finished. If you would look at Page 45?

1 A. The same exhibit?

2 Q. The Bates number. This deals with some tapes  
3 from other locations. And again it says, "The  
4 aforementioned tapes were placed into the Evidence Control  
5 Room," correct?

6 A. That is correct.

7 Q. But this one has a different sub file number,  
8 doesn't it, E-803?

9 A. E is the sub file number or letter.

10 Q. Yes. And these tapes seem to deal with locations  
11 other than what I had asked for out of Oklahoma City.  
12 You're not near the vicinity of the Murrah Building, I mean  
13 there are other locations apparently?

14 A. All of the attachments that you're referring to  
15 in this exhibit were pulled based on your original request.

16 Q. Yes, ma'am, but I'm -- what I'm saying is the  
17 ones that seem to be out of the Oklahoma City area seem to  
18 be in sub file E which you would expect. The sub files are  
19 set up for just different purposes, aren't they?

20 A. Each sub file is given a name.

21 Q. And there is an index for them too, isn't there?

22 A. What do you mean?

23 Q. Wouldn't there be an index who would tell someone  
24 wanting to get into the sub files what is in each sub file?

25 A. Again, the field maintains the file, I don't

1 know.

2 MR. TRENTADUE: That is all of the questions I have,  
3 Your Honor.

4 THE COURT: Redirect?

5 MS. WYER: Yes.

6 **REDIRECT EXAMINATION**

7 BY MS. WYER:

8 Q. Ms. Mitchell, first of all the plaintiff asked  
9 you about the tapes that you received from the field office.  
10 Do you have any reason to believe that the field office  
11 edited or redacted any of the tapes that they had identified  
12 as responsive before sending those tapes to you?

13 MR. TRENTADUE: Objection, Your Honor, foundation and  
14 speculation.

15 MS. WYER: Well, Your Honor, the plaintiff asked --

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 Q. (By Ms. Wyer) The plaintiff also asked you about  
19 an ECF search in response to his request. Is there -- do  
20 you have any reason to think that an ECF search here would  
21 have identified records that were not found through the  
22 combination that occurred through your or your office's UNI  
23 search and the field office's ZyIndex search?

24 A. No. The search in ECF would most likely have not  
25 have warranted information because OKBOMB happened prior to

1 the implementation of ACS which is another reason why the  
2 field performed a ZyIndex search which is text base as well  
3 as a search of her evidence database.

4 Q. So based on what you know, was the search that  
5 was done a more reliable method than the ECF search that the  
6 plaintiff was suggesting?

7 MR. TRENTADUE: Objection, I think that is a question  
8 for the court.

9 THE COURT: I'm going to sustain the objection for  
10 lack of foundation as to what basis she has to say whether  
11 or not it is more reliable.

12 Q. (By Ms. Wyer) Is part of your role to determine  
13 what kinds of searches are appropriate?

14 A. That is correct.

15 Q. And in that role, would you consider an ECF  
16 search a more reliable way of searching than a search that  
17 was actually done?

18 A. No.

19 Q. Then why is that?

20 A. Because, as I mentioned, OKBOMB happened in '95,  
21 in April of '95. It wasn't until October of '95 that ACS  
22 was implemented.

23 Q. And what does that mean in regard to  
24 effectiveness of an ECF search?

25 A. ECF would require that information was uploaded

1 in order to search text. So the OKBOMB investigation  
2 happened prior to the implementation of ACS so there would  
3 be no material to search via text for OKBOMB.

4 Q. And when you say that are you talking about ECF  
5 specifically?

6 A. ECF specifically.

7 Q. The plaintiff asked you about the ELSUR system.  
8 Can you explain whether you would consider the ELSUR system  
9 an appropriate means of searching for records responsive to  
10 plaintiff's request?

11 A. No. We did not search the ELSUR, the Electronic  
12 Surveillance Indices, because that indices maintains records  
13 or surveillance other than what Mr. Trentadue was seeking.  
14 Mr. Trentadue was seeking surveillance, if you will, from  
15 third-party or business locations which is not what the  
16 ELSUR indices is for.

17 Q. Did the plaintiff at any time before today ask  
18 the FBI to search ELSUR or indicate in any way that he  
19 expected that kind of material to be included in response to  
20 his request?

21 A. No.

22 Q. The plaintiff referred you to his Exhibit 44 and  
23 you stated -- are you looking at that?

24 A. I am.

25 Q. Do you remember when he was asking you about



1 that?

2 A. Yeah, I don't remember -- I had never seen this.

3 Q. You had answered that this information in the  
4 bottom paragraph would not interfere with your ability to do  
5 your job. Do you remember that?

6 A. Yes.

7 Q. And can you explain why that is?

8 A. Well, again, it is talking about the upload of  
9 documents and the upload is through ECF. And for locating  
10 responsive material for Mr. Trentadue's request, we did not  
11 search ECF because we knew that OKBOMB happened prior to the  
12 implementation of ACS and therefore would not warrant the  
13 information he was seeking which again is why we went to the  
14 field who did multiple searches.

15 Q. The plaintiff also asked about whether the  
16 Hoffman documents were provided to him. Did the plaintiff's  
17 FOIA request ask for the Hoffman documents?

18 A. May I look at that? He did not request  
19 information from that file. He was just providing the case  
20 citation for information and assistance in identifying the  
21 actual information he sought.

22 Q. And I just wanted to make sure your testimony is  
23 clear on one point in regard to the *Hoffman* documents.

24 Looking at Exhibit 244, again, and Bates stamp 398  
25 that we had looked at before, and you had testified that

1 that -- that videotape identified on that page is in the  
2 list titled FBI Headquarters Requests. So can you conclude  
3 that that is the videotape that was mentioned as the one  
4 videotape at FBI Headquarters on the document that the  
5 plaintiff had showed you?

6 MR. TRENTADUE: Objection speculation, Your Honor.

7 THE COURT: Sustained.

8 Q. (By Ms. Wyer) Is there any other -- do you have  
9 any --

10 THE COURT: Did she do anything to determine what was  
11 on that tape?

12 MS. WYER: Well, that tape is identified on this  
13 document, Your Honor.

14 THE COURT: That is my question. When she saw it  
15 identified on the document, did she do anything to determine  
16 what was included on that tape?

17 Q. (By Ms. Wyer) Well, the title of the  
18 description -- can you understand what this tape was based  
19 on the description in the table?

20 A. The table lists the description as tape from  
21 Channel 4 regarding the bomb site.

22 Q. And so would you deem that description an  
23 indication that that tape was potentially responsive to the  
24 plaintiff's FOIA request in this case?

25 A. I would determine it to be nonresponsive.

1 Q. Why is that?

2 A. Well, it is talking about the bomb site. That  
3 means the bombing had already occurred. And this is Channel  
4 4 airing of or reference to this tape of the bomb site.

5 Q. Thanks. The plaintiff also pointed you to a  
6 number of newspaper articles and documents that he submitted  
7 in correspondence with the FBI. Can you explain, again, how  
8 you -- how those communications from the plaintiff after he  
9 received his response and continued to correspond and ask  
10 questions and submit attachments, how those were handled and  
11 how those were followed up on?

12 A. As I received copies of the letters and/or  
13 correspondence from Mr. Trentadue, I reached out on several,  
14 actually numerous occasions to the field and confirmed that  
15 again and again that there was no additional material  
16 responsive.

17 THE COURT: Ms. Mitchell, numerous times you referred  
18 to the field. I don't know who the field is.

19 THE WITNESS: The field is Oklahoma City where the  
20 bombing occurred.

21 THE COURT: You must have talked to someone at that  
22 location.

23 THE WITNESS: Linda Vernon.

24 THE COURT: Okay. When you're talking about the  
25 field, was it Linda Vernon?

1 THE WITNESS: Linda Vernon.

2 THE COURT: Anyone other than Linda Vernon?

3 THE WITNESS: I have spoken to the other people at the  
4 field, yes.

5 THE COURT: But when you are referring that you  
6 referred something or you followed up with the field, are  
7 you talking about Linda Vernon?

8 THE WITNESS: That is correct.

9 THE COURT: Anyone else?

10 THE WITNESS: Um, for material responsive, no.

11 THE COURT: Okay.

12 Q. (By Ms. Wyer) Ms. Mitchell, did you look at the  
13 documents such as the newspaper articles, for example, in  
14 Plaintiff's Exhibit 10, what is Exhibit H to Mr. Hardy's  
15 declaration which is at 60 -- at Page 39 of 96?

16 A. 39?

17 Q. Yes.

18 A. And the question, I'm sorry?

19 Q. Did you yourself look at this article to see if  
20 it -- if you could tell whether it identified anything that  
21 would assist in locating additional responsive tapes?

22 A. Other than the Hanger tape that we had already  
23 processed and released in its entirety, no.

24 Q. Are you saying that it -- from looking at this  
25 there is nothing that -- is there anything here that would

1 assist in locating another -- another copy of the tape or  
2 version of the tape or any other responsive material?

3 A. No.

4 THE COURT: Let me follow up on that. The letter  
5 specifically, excuse me, specifically refers to taping the  
6 arrest of Mr. McVeigh. You said, as I understand it, that  
7 you had reviewed the Hanger tape; is that correct?

8 THE WITNESS: No, I said I had not reviewed it until  
9 today when it was played.

10 THE COURT: So you didn't look at the tape to see  
11 whether or not it contained any of the information described  
12 in this Houston Chronicle Article.

13 THE WITNESS: I did not review the tape.

14 THE COURT: And you didn't ask anyone else to?

15 THE WITNESS: Well, um, Linda Vernon is familiar with  
16 what is on every tape.

17 THE COURT: So in terms of your level, to the best of  
18 your knowledge, nobody reviewed the Hanger tape to see if in  
19 fact it included the information Mr. Trentadue was  
20 requesting?

21 MS. WYER: Your Honor, I respectfully object to your  
22 question as calling for irrelevant information.

23 THE COURT: Well, I'll have to be the decider of this  
24 issue and it seems relevant to me. So I would like you to  
25 answer. Did anyone at your level review the Hanger tape to

1 determine whether it was responsive to Mr. Trentadue's  
2 request?

3 THE WITNESS: At RIDS, no.

4 THE COURT: And when you got the additional  
5 information, did you do anything to follow up to determine  
6 whether given this additional information you had provided  
7 the wrong tape?

8 THE WITNESS: Your Honor, there was only one tape  
9 located through our search regarding Mr. Hanger.

10 THE COURT: Did you do anything to determine whether  
11 or not that tape was incomplete?

12 THE WITNESS: We provided a copy of the copy that we  
13 maintained.

14 THE COURT: Did you go back to anyone in the field,  
15 Ms. Vernon or someone else, and say Mr. Trentadue says this  
16 tape is incomplete, would you please verify that we have  
17 given him everything that we have?

18 THE WITNESS: I did not specifically go back, no.

19 THE COURT: Did anyone else from your office do that?

20 THE WITNESS: No.

21 THE COURT: So is it correct that in response to this,  
22 you basically did nothing to determine, based on the  
23 additional information, whether you had provided the correct  
24 tape?

25 THE WITNESS: To say that we did nothing?

1 THE COURT: That is what I'm asking. Is it correct  
2 that did you nothing in response to this letter, Exhibit H?

3 THE WITNESS: We did nothing because we were competent  
4 in our search in what we located.

5 Q. (By Ms. Wyer) Ms. Mitchell, to clarify, um, did  
6 you say that you did go back to the field and ask them about  
7 these inquiries?

8 A. Honestly, I have gone back and forth since 2008  
9 on so many occasions in dealing with Linda Vernon about  
10 what, you know, all of the missing tapes or the inaccuracies  
11 or whatever the case may be. That to say that I  
12 specifically went back to her about this, I know that the  
13 Hanger tape was an issue as well as surveillance from the  
14 Murrah Building and that we have gone back and forth with  
15 the -- with Linda Vernon on numerous occasions. Did I  
16 specifically at this time go back to Linda Vernon? I can't  
17 answer that with an honest yes. I don't remember. But I  
18 know over the course of from 2008 to the present, we have  
19 discussed this case on numerous occasions and to confirm  
20 that everything we did is everything that we can do.

21 Q. The plaintiff also asked whether you had provided  
22 search slips. Would search slips be responsive to the  
23 request that he submitted?

24 A. No.

25 Q. Why is that?

1           A. We do not process our search slips unless  
2 requested to do so. And in this case, he did not ask for  
3 them.

4           Q. Now, the plaintiff also asked you about meetings  
5 you had with Mr. Hardy. At any time did Mr. Hardy suggest  
6 that you should answer less than truthfully in these  
7 proceedings?

8           A. Absolutely not.

9           Q. And in the course of processing the response to  
10 the plaintiff, did Mr. Hardy ever direct you to hide  
11 evidence or not provide responsive material?

12          A. No.

13          Q. Did Mr. Hardy ever prevent you from asking  
14 questions of the field or sending on inquiries from the  
15 plaintiff to the field office?

16          A. No.

17          MS. WYER: No further questions.

18          THE COURT: Mr. Trentadue, anything further from this  
19 witness?

20          MR. TRENTADUE: Yes, Your Honor.

21                                   **RECROSS-EXAMINATION**

22          BY MR. TRENTADUE:

23           Q. Would you agree with me, Ms. Mitchell, that the  
24 best evidence in this particular trial here about what you  
25 did in terms of the search would be your search slips?



1 A. Um, the best evidence?

2 Q. It would record what was done and when it was  
3 done, wouldn't it, ma'am?

4 A. Well that would only -- no, I wouldn't agree with  
5 that statement.

6 Q. But the search slips would certainly record what  
7 was done, who did it, and when it was done, wouldn't it,  
8 ma'am?

9 A. Um, only from our location which we have already  
10 said we have searched ACS. It wouldn't indicate all of the  
11 other searching that had been done.

12 Q. Okay. But you do have a search slip?

13 A. We have a search slip.

14 Q. And I asked you about, um, ECF is Electronic Case  
15 Filing and unless there is some reason to keep it out, the  
16 FBI documents are uploaded there and it is a text based  
17 search, correct?

18 A. I am not sure I follow.

19 Q. Did you search by text base, type in words and  
20 search?

21 A. ECF is text base.

22 Q. And you said you didn't search ECF in this case  
23 in my FOIA request?

24 A. And I have explained why, that is correct.

25 Q. And you said there would be no reason to?

1           A.    Um, not for your case.

2           Q.    Okay.  Because it didn't come in until early in  
3  -- late I think it came in October 1995?

4           A.    Correct.

5           Q.    The bombing took place in --

6           A.    Six months.

7           Q.    -- April of '95?

8           A.    That is right.

9           Q.    And I wonder if you would look at Plaintiff's  
10 Exhibit 54, it is Mr. Hardy's Third Supplemental Declaration  
11 in Paragraph 20.  Do you have it in front of you, ma'am?

12          A.    Yes.

13          Q.    Second -- third sentence Mr. Hardy says, quote,  
14 "While it is always a possibility that responsive documents  
15 might have been misfiled and thus could be located somewhere  
16 other than in the OKBOMB file, granted though it would be  
17 impossible to know where, paren, I am not aware that this is  
18 the case, and a reasonable search did not and would not  
19 locate any such documents, paren, if they exist, paren,  
20 because they would not be in a location likely to contain  
21 responsive documents," unquote.

22                One place to have looked for any misfiled documents  
23 would have been a text based search in ECF, wouldn't it  
24 have, ma'am?

25          A.    I don't know.

1 Q. Well, I mean you said you can search all of the  
2 files through ECF?

3 A. No, I said that the only -- that ECF is only as  
4 good as the information within it, not everything is  
5 uploaded.

6 Q. Okay. But if it were in fact misfiled in another  
7 file in another case, you could have found it using ECF  
8 system had it been uploaded?

9 A. Had it been uploaded.

10 Q. We would offer that language from Paragraph 20 of  
11 Mr. Hardy's declaration, Your Honor, which is Exhibit 54.

12 THE COURT: It will be received as part of the  
13 question.

14 MR. TRENTADUE: Just a couple of more.

15 (Whereupon, Paragraph 20 of Plaintiff's Exhibit 54  
16 was received into evidence.)

17 Q. (By Mr. Trentadue) Ma'am, I asked about -- we  
18 talked about the Electronic Surveillance System?

19 A. Yes.

20 Q. The separate system wasn't searched here?

21 A. No and I have explained why.

22 Q. Okay. And you said well you didn't think my  
23 request fell within the scope of that?

24 A. It did not.

25 Q. And when I asked you -- when we looked back at

1 the Exhibit 203?

2 A. Plaintiff's?

3 Q. I don't confine my request for that tape that  
4 shows security videotapes as showing the Ryder Truck pulling  
5 up to the Federal Building and then pausing 7 to 10 seconds  
6 before resuming into a slot in front of the building and a  
7 truck detonation three minutes and six seconds after the  
8 suspects exited the vehicle? I don't confine it to a  
9 building, do I, ma'am?

10 A. I'm sorry, which exhibit are you on?

11 Q. Exhibit 203, the second page.

12 A. Your question again?

13 Q. My request isn't confined to a specific location,  
14 is it? Let me ask this. If this tape is out there, there  
15 is a tape that shows this. No matter where it is or who  
16 took it, I want it, correct?

17 A. You want it but it relates to OKBOMB, does it  
18 not?

19 Q. Yes.

20 A. So what is your question?

21 Q. My question is, I don't confine that request to a  
22 specific building or a specific person who took it, I say in  
23 fairness I say, if it exists I would like that tape?

24 A. You're correct which is why we searched Ryder.

25 Q. As I understand it the -- and how do you

1 pronounce it the ELSUR?

2 A. ELSUR, the Electronic Surveillance.

3 Q. And that is the surveillance arm of the database?

4 A. Surveillance meaning we're investigating an  
5 individual or persons not in the sense of we want  
6 surveillance of cameras from these areas, it is a different  
7 type of surveillance, sir.

8 Q. But if you had been, for example, surveilling  
9 someone for a planned attack on the Murrah Building and had  
10 a film of that, that would go into this ELSUR system,  
11 wouldn't it?

12 MS. WYER: Objection, calls for speculation, Your  
13 Honor.

14 THE COURT: Sustained.

15 THE WITNESS: I would assume.

16 THE COURT: You don't need to answer the question.

17 THE WITNESS: Sorry.

18 Q. (By Mr. Trentadue) Have you ever done -- do you  
19 know what goes in to ELSUR?

20 A. Well, I know that it is -- that it is  
21 surveillance of individuals being investigated.

22 Q. Do you know if it includes videotape  
23 surveillance?

24 A. I, other than knowing that ELSUR exists and if a  
25 request comes in we search for it, um, I don't know a great

1 detail of ELSUR.

2 Q. You don't know whether it is phone taps?

3 A. Um, again, I don't. It could be I think a number  
4 of things. I don't know.

5 Q. If you look at Exhibit 45, ma'am, you were asked  
6 could you think of any reason that anyone within the FBI may  
7 have to conceal the existence of this tape and you said you  
8 could not possibly think of a reason, is that correct,  
9 ma'am?

10 A. That is right.

11 Q. And I wonder if you would read -- and you  
12 recognize this as a 302?

13 A. It is a 302.

14 Q. And it states in there, and it is blacked out,  
15 but it says, blank related that this document contained  
16 information which remove all doubt that the Alcohol Tobacco  
17 and Firearms, ATF, and the Federal Bureau of Investigation,  
18 FBI, had prior knowledge of the bomb which destroyed the  
19 Alfred P. Murrah Federal Building in Oklahoma City on  
20 April 19, 1995. Blank stated that these agencies attempted  
21 to develop a sting operation and did not take this bomb  
22 threat seriously. If that was true, ma'am --

23 MS. WYER: Objection, do you want me to wait until he  
24 asks the question?

25 THE COURT: Let him ask his question first, please.

1 MR. TRENTADUE: If what is printed in FBI 302 is true,  
2 ma'am, that would be certainly motive for someone to conceal  
3 the existence of this tape, wouldn't it?

4 MS. WYER: Objection, Your Honor, this calls for  
5 speculation and this document contains inadmissible hearsay.

6 THE COURT: Well, I am going to sustain the objection  
7 on the grounds that there is no foundation as to whether or  
8 not this witness saw this document and knew of this  
9 allegation as a basis for her to believe that the search  
10 should be broader.

11 MR. TRENTADUE: What if I frame my question as a  
12 hypothetical. Assuming this is true, that would certainly  
13 be a basis for someone to misfile that tape or otherwise see  
14 that it couldn't be found?

15 MS. WYER: Objection, Your Honor, same objection.

16 THE COURT: Overruled.

17 THE WITNESS: Um, until today, I don't -- I have never  
18 seen this document.

19 Q. (By Mr. Trentadue) But my question is you  
20 testified that you couldn't think of a reason anyone would  
21 want to keep the information from going public. And what  
22 I'm asking you, assuming this is true, that certainly is a  
23 reason not to see it go public, isn't it, ma'am?

24 MS. WYER: Objection, calls for speculation, Your  
25 Honor. This is blatant attempts to defame the FBI based on

1 baseless allegations in the interview report.

2 THE COURT: Overruled. If this were true, would that  
3 be a reason to hide information?

4 MS. WYER: Lack of foundation, Your Honor.

5 THE WITNESS: So the question --

6 Q. (By Mr. Trentadue) Ma'am, if this were true,  
7 then there would certainly be motive on the part, I'm not  
8 saying you, I'm not saying on the part of the people doing  
9 the search in Oklahoma, but there certainly would have been  
10 motive on the part of someone within the FBI to make sure  
11 that this tape never surfaced, that is true, isn't it?

12 A. If this were true.

13 Q. Now, one last question for you, ma'am.  
14 Exhibit 55, and I won't ask you all of these, have you ever  
15 seen this one before?

16 A. 55?

17 Q. Yes.

18 A. I believe this is something that you provided as  
19 an exhibit.

20 Q. You have seen it before?

21 A. It looks familiar.

22 Q. It refers to exactly Exhibits 55, 56, 57, 58, 59,  
23 65 and 66. It referred to an attempt, an alleged attempt,  
24 and the report of an FBI agent attempting to sell the tape  
25 of the Murrah bombing -- building bombing to the media for a



1 million dollars. Did you do any kind of follow up on this,  
2 ma'am?

3 MS. WYER: Objection, Your Honor, this was provided as  
4 a trial exhibit. It was not communicated to the FBI asking  
5 it to do something in response.

6 THE COURT: The objection is sustained. You need to  
7 lay some additional foundation.

8 Q. (By Mr. Trentadue) Well, ma'am, you say that  
9 right up to almost the eve of trial you were constantly  
10 following up on leads in response to my FOIA request. Do  
11 you -- you received this information, did you do anything  
12 about it.

13 A. Yes.

14 Q. What did you do?

15 A. Um, we reached out to -- first when I say we, it  
16 was the Office of General Counsel reached out to the LA  
17 field office because LA is, if I remember correctly, where  
18 this alleged sale potentially occurred. We reached out to  
19 the field and asked them if they were aware of anything. We  
20 also reached out to the Office of Professional  
21 Responsibility to seek whether or not there was any  
22 information they had on this alleged sell. All of our  
23 efforts came up with nothing.

24 Q. And when you say we reached out, who was we?

25 A. Um, the office -- again, it -- myself and as well

1 as the Office of General Counsel.

2 Q. And who did you reach out to?

3 A. Um, I was asked to reach out to the Office of  
4 Professional Responsibility in the absence of OGC counsel.

5 Q. And did anyone reach -- but you didn't reach out  
6 to the Los Angeles Field Office?

7 A. No, that was handled by the attorney of the  
8 Office of General Counsel attorney.

9 Q. Your trial attorneys here or other attorneys?

10 A. Other -- other attorneys.

11 Q. Did you receive a report back on that?

12 A. Um, again we found nothing.

13 Q. Well, I asked you did you receive a report back?

14 A. Yes. From -- I was copied on an e-mail or a  
15 conversation. We found nothing and I found nothing with the  
16 research that I did.

17 MR. TRENTADUE: No further questions, Your Honor.

18 THE COURT: Thank you, you may step down. May this  
19 witness be excused?

20 MR. TRENTADUE: Yes, Your Honor.

21 THE COURT: You may be excused. It is about 12:30, so  
22 why don't we take a half an hour lunch break. We'll resume  
23 at 1:00. We'll be in recess.

24 (Recess.)

25 THE COURT: We are back in session in Trentadue versus

1 the FBI. The parties are present, counsel is present, so we  
2 can proceed once the judge gets in the courtroom. I guess  
3 the new courtroom believes they should lock the judge out of  
4 the courtroom.

5 Ms. Wyer, you may proceed with your next witness.

6 MS. WYER: Thank you, Your Honor. Before we proceed  
7 with that, I just wanted to raise a question about the  
8 schedule. This first witness took longer than we had  
9 anticipated and we're wondering whether Your Honor would  
10 extend today's session beyond 2:30 or is there --

11 THE COURT: Unless Mr. Trentadue has an objection, I  
12 don't have a calendar the rest of the afternoon we can go --  
13 we can go later if that works for you, Mr. Trentadue.

14 MR. TRENTADUE: Your Honor, I think the other  
15 witnesses are going to go fairly quick. My cross on the  
16 next witness will not be very long. I don't see any problem  
17 with finishing their case by tomorrow.

18 THE COURT: Let's proceed and if you -- we can go as  
19 long as we need to to complete this witness.

20 MS. WYER: Thank you, Your Honor. The FBI next calls  
21 Linda Vernon.

22 THE CLERK: Please raise your right hand.

23 **LINDA VERNON,**

24 called as a witness at the request of the FBI,

25 having been first duly sworn, was examined

1 and testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Thank you. All right, please state and  
4 spell your first name for the record.

5 THE WITNESS: My name is Linda, L-I-N-D-A, Vernon,  
6 V-E-R-N-O-N.

7 **DIRECT EXAMINATION**

8 BY MS. WYER:

9 Q. Good afternoon, Ms. Vernon. Do you see the  
10 binder for you there with your name on it?

11 A. No. Hold on. Now I do. Sorry. Can I get this  
12 one out of my way? Yes, ma'am.

13 Q. Ms. Vernon, please tell the court what your  
14 position is?

15 A. I am a forensic accountant.

16 Q. Where do you work?

17 A. I work for the FBI in Oklahoma City.

18 Q. What does your job involve?

19 A. Um, I assist agents with the investigation of the  
20 different classifications. I, um, have an accounting degree  
21 which mainly means I analyze financial records but I analyze  
22 almost any kind of records.

23 Q. And you do this in ongoing current  
24 investigations?

25 A. Yes, ma'am.

1 Q. And how long have you been in that position?

2 A. I have been in the position since February  
3 of 1983.

4 Q. Is that when you started with the FBI?

5 A. Yes, ma'am.

6 Q. Were you working in the Oklahoma City Field  
7 Office in April of 1995 when the bombing of the Murrah  
8 Federal Court Building occurred?

9 A. Yes, ma'am.

10 Q. Did you have any role in the FBI's Oklahoma City  
11 bombing or OKBOMB investigation at the time that the --  
12 after the bombing happened?

13 A. I originally was in front of the building about  
14 noon that day assisting with one of the photographers and  
15 then because we were so shorthanded, I wound up working a  
16 night shift answering phones. And then once things sort of  
17 calmed down and we got a command post, I became part of the  
18 discovery team where I was collecting the subpoenaed  
19 information and doing the paperwork for it because it  
20 couldn't go to the command post because it didn't have a  
21 mailing address so the records would come into the FBI  
22 office and then I would do the paperwork and then I would  
23 make sure that, um, whichever team subpoenaed it got the  
24 records.

25 And then about August of 1995, I started assisting

1 basically full-time with the discovery team. And then when  
2 we moved up to Denver for the trial, I became the discovery  
3 coordinator because the lady at the time chose not to go to  
4 Denver.

5 Q. So in your work and in those roles that you have  
6 described during the investigation and afterwards in Denver,  
7 did you become familiar with the evidence that was collected  
8 during the OKBOMB investigation?

9 A. Yes, ma'am. As part of my discovery duties I  
10 would make sure that the records were provided or reviewed  
11 by the defense and made sure that whatever they requested  
12 copies of, or if it was a trial subpoena they received the  
13 copies. So I have seen almost every record in the Oklahoma  
14 City bombing case.

15 Q. And how long were you in Denver as discovery  
16 coordinator?

17 A. We went up April 1996 and I came back to Oklahoma  
18 City the end of June 1998. I stayed through both trials.

19 Q. And are you familiar with a provision in the  
20 Freedom of Information Act that allows individuals to submit  
21 requests for information?

22 A. I do now. I didn't know much of Freedom of  
23 Information before all of this.

24 Q. Um, are you familiar with the FOIA request that  
25 the plaintiff in this case submitted?

1 A. Yes, ma'am.

2 Q. To the FBI that is at issue here?

3 A. Yes, ma'am.

4 Q. Let me show you what is marked as Exhibit 200.

5 A. Yes, ma'am.

6 Q. Have you seen that document before?

7 A. Yes, ma'am.

8 Q. And do you recognize that document as the FOIA  
9 request that the plaintiff initially submitted?

10 A. Yes, ma'am.

11 Q. Were you asked to do a search for records  
12 responsive to this request?

13 A. Yes, ma'am.

14 Q. Now, are searches of OKBOMB records for FOIA a  
15 regular part of your job responsibilities?

16 A. No, ma'am.

17 Q. So do you know why you were the one that was  
18 asked to do this?

19 A. Um, I was asked because I know -- I mean I have  
20 institutional knowledge of the case because I was there for  
21 the whole prosecution of the case and because I basically  
22 provided the documents, reviewed the documents with the  
23 defense. I know everything that is in the evidence also.

24 Q. Now since the plaintiff's request here primarily  
25 concerns videotapes, can you explain to the court whether

1           you are specifically familiar with videotapes collected  
2           during the OKBOMB investigation?

3           A.     Yes, because several of the videos that  
4           Mr. Trentadue requested actually were trial exhibits, and  
5           because, again, I had to show all of the evidence to the  
6           defense for them to decide if they wanted a copy of it, I  
7           showed all of these videos to them.

8           Q.     Do you know approximately how many videotapes  
9           were collected during the OKBOMB investigation?

10          A.     Um, hundreds, but I found out recently it is over  
11          700. I mean I have never took the time to count them. I  
12          just know there is a lot.

13          Q.     And what -- what kinds of videotapes are -- were  
14          collected during the investigation?

15          A.     Um, some videotapes like Mr. Trentadue requested  
16          were surveillance tapes that they took off of the buildings  
17          right around the Murrah Building. Others were like Michael  
18          Fortier's son's birthday party. If they gave a video like  
19          the search of Terry Nichols house, there is like -- like a  
20          movie, um, a lot of people gave malicious type videos. Mark  
21          Koernke and his series where he is a fake speaker that a lot  
22          of people had his tapes. We also got some -- we got a  
23          couple of cassette tapes like The Journal Record was auto  
24          recording a court case there, so there is a cassette tape  
25          that has that on it. But other than that, I mean almost



1 anything.

2 Q. So basically are you saying that a videotape  
3 could be collected during any search that happened during  
4 the investigation and then it would become part of the  
5 evidence?

6 A. Yes. I know that some of the videos came from  
7 the search of Terry Nichols' house. I think at least one of  
8 the copies of the tape of the birthday came from Michael  
9 Fortier. And I know we had like three or four copies of  
10 them, I'm not sure how they all came in.

11 Q. Is there any single log or list that is devoted  
12 exclusively to videotapes?

13 A. No, ma'am.

14 Q. Now, when you were asked to do a search for the  
15 tapes responsive to the plaintiff's request here, how did  
16 you start?

17 A. First I reviewed his request and basically in my  
18 mind decided or knew which ones we had and which ones we  
19 didn't have. Like Charlie Hanger, it is weird how your mind  
20 works, but I knew that was 1-B 200. So then what I did is I  
21 went to my evidence database which is Excel, excuse me,  
22 Access Database, and I started searching in that first  
23 because I knew that the descriptions worked well in that one  
24 and then I just basically started compiling a list. And  
25 then um -- go ahead.

1           Q.    Let me ask you.  You mentioned this evidence  
2 database.  Can you -- back up.  Can you explain to the court  
3 what -- what that is and what -- where it came from?

4           A.    Um, a lot of the systems that we had in place for  
5 the FBI weren't as user friendly as you would like.  So one  
6 of the things we did is we took all of the evidence and put  
7 it in an access database.  But when we did that we made it  
8 separate for like the 1-B which is the bulky evidence and  
9 then 1-C which is not chain of custody per se bulky evidence  
10 and 1-As.  We set up three separate databases.  And then  
11 when I was like reviewing the documents with the defense, we  
12 looked and got better descriptions of them and put them all  
13 in those separate databases.

14          Q.    You used the terms 1-A, 1-B, 1-C.  Are those all  
15 designations for different kinds of evidence?

16          A.    Yes.  That is the bureau designations form.  And  
17 1-A could be paper documents, sometimes there was a video.  
18 Usually a 1-A was used like for interview notes, smaller  
19 things that literally fit in the file.  1-Bs are the bigger  
20 items which could be in the OKBOMB case could be videotapes,  
21 they could be telephone records, it could be hotel records,  
22 it could be crime scene like the tires.  Tim McVeigh's car  
23 was a 1-B.  And then 1-Cs are usually the larger pieces of  
24 evidence that would fit in a 1-A but they are too big, and  
25 usually are not grand jury obtained.

1 Q. And this evidence database, when was it first set  
2 up?

3 A. It was set up shortly after the bombing. It was  
4 used more as an investigative tool where you could search it  
5 and find documents -- not documents but find evidence  
6 because sometimes agents especially had not used at the time  
7 FOIMS that well and didn't know how to search.

8 Q. Could you explain to the court what you mean by  
9 FOIMS?

10 A. FOIMS is the system before ACS. I'm not sure  
11 what the F-O-I-M-S stands for, but it was the previous file  
12 record for the bureau. And then in October of '95 is when  
13 we went to ACS.

14 Q. So FOIMS was the system in place at the time that  
15 the bombing occurred?

16 A. Correct. And it did not have text retrievable.  
17 No documents were uploaded in FOIMS.

18 Q. Now, you were describing how data was input into  
19 this evidence database. Did that -- did the information in  
20 the database get updated while the investigation was going  
21 on and after?

22 A. When we first started it we had to catch it up to  
23 the evidence that we had. And one of the duties like for  
24 the 1-A one was we got all of the 1-As out and went through  
25 them all. Same thing with the 1-Bs. And then as evidence

1       came in and got new numbers, we kept it current because lots  
2       of times I would charge out the evidence to show it to the  
3       defense so we would make sure that we had it and we had it  
4       correctly. Lots of time we could do a printout from ACS  
5       that just printed the evidence, but we still made sure it  
6       was correct and double checked it.

7             Q.    And did you -- you seem to be referring to a  
8       process where you verified information in the database or  
9       corrected it or made corrections as you went along?

10            A.    Yes. Because sometimes everybody makes an error  
11       and sometimes they might have just said bank records from  
12       ABC Bank while what we tried to do is list like the people  
13       that the records pertained to. We tried to be a little bit  
14       more detailed. And one of the other things that I didn't  
15       mention is that the 1-A, the 1-B and the 1-C they -- a  
16       printout was done every month at the beginning we did  
17       monthly discovery productions. Every month we gave them a  
18       printout of our evidence so that they would have searchable  
19       -- they could look through it and find what they needed.  
20       And it was up to them if they wanted to load it on a  
21       computer. Actually, we provided them -- we provided the  
22       access database on a floppy so they could add it, so they  
23       would have search, they could retrieve stuff, too. Because  
24       of the volume of this case, it was hard for the defense to  
25       keep track of what they were getting.

1 Q. So when you say they you mean the defense counsel  
2 in the Oklahoma City bombing prosecution?

3 A. Yes, I'm sorry. Timothy McVeigh and Terry  
4 Nichols defense teams were given the databases so that they  
5 could do searches also.

6 Q. And this was this evidence database that you --

7 A. Correct.

8 Q. Okay. So did -- did you personally use the  
9 evidence database when you were discovery coordinator in the  
10 OKBOMB during your role during the OKBOMB investigation and  
11 prosecutions?

12 A. Yes, ma'am.

13 Q. So are you very -- are you familiar with the  
14 material in that database?

15 A. Yes, ma'am.

16 Q. And can you say whether this evidence database  
17 identifies every piece of evidence that was collected during  
18 the OKBOMB investigation?

19 A. In between the three, yes. The bigger 1-B  
20 evidence would have been in the bulky one, but each separate  
21 database contains current to the end of the investigation.

22 Q. So when you take the 1-A, 1-B, and 1-C together,  
23 it identifies every piece of evidence collected?

24 A. Correct.

25 Q. How do you know that?

1           A.    Because each time we got a new 1-B or 1-A or 1-C  
2 we updated the database.  And then if for some reason when  
3 we reviewed it and there was -- it didn't -- for what we had  
4 didn't match what it -- we actually had in front of us we  
5 corrected it.  Also, they used -- they tied in the trial  
6 exhibit database with the 1-B database and they used those  
7 two to make the trial exhibits.

8           Q.    So can you -- can you continue explaining why did  
9 you begin your search with this database?

10          A.    I knew my database -- the main reason is I'm lazy  
11 and it was the easier one for me to use.  But I used that  
12 because I knew it had all of the information in it and it  
13 would be the retrievable aspect of ACS was harder.  You --  
14 you couldn't search it as easy.  And like I said, I was more  
15 knowledgeable about my evidence database.

16          Q.    Okay.  And where is this evidence database?

17          A.    Right now it is on my computer in Oklahoma City.

18          Q.    Does anyone else in the Oklahoma City Field  
19 Office have this database on their computer?

20          A.    No.

21          Q.    And who has access to the database?

22          A.    Me or one of the tech guys if they needed to they  
23 could go to the server and look at it.  But you have to --  
24 you have to sign on as me.  You can't just sign on my  
25 computer, it has to be me.  It is part of my drive.

1 Q. So this is essentially your tool at this point?

2 A. At this point yes it is only my -- it has been  
3 removed off of all of the other computers.

4 Q. So can you explain to the court how you went  
5 about the search of the evidence database?

6 A. I --

7 MR. TRENTADUE: Your Honor, I'm going to object to  
8 this line of questioning. I don't recall the witness's  
9 database being identified as a source of a search in this  
10 case until today.

11 THE COURT: And your objection is --

12 MR. TRENTADUE: It is irrelevant. I mean they listed  
13 what they searched and Mr. Hardy did repeat it in his  
14 deposition, and I don't believe he mentioned anything about  
15 this witness's database. It was the ZyIndex in Oklahoma  
16 City.

17 THE COURT: I'm going to sustain the objection but  
18 allow you to lay additional foundation to correct any  
19 confusion as to which databases were actually searched in  
20 response to the request.

21 Q. (By Ms. Wyer) Um, do you -- Ms. Vernon, do you  
22 consider this database that you have access to part of your  
23 institutional knowledge?

24 A. Yes, ma'am.

25 MS. WYER: Your Honor, we did identify institutional

1 knowledge as a source that was referred to for the search  
2 and this kind of thing that is only because Ms. Vernon has  
3 specialized knowledge is what we were referring to there.  
4 And this is the search that occurred. We are presenting  
5 this case to explain to the court the search that actually  
6 occurred for responsive records and this is what occurred.

7 THE COURT: Mr. Trentadue?

8 MR. TRENTADUE: I am going to object, Your Honor.  
9 This is not what was identified as the database searched.  
10 I'm hearing the witness say that she has created her own  
11 private database and that becomes a source of the FOIA  
12 search. And we are hearing -- I'm hearing this for the  
13 first time.

14 THE COURT: What I'm confused about, Ms. Wyer, is we  
15 referred to something as the OKBOMB database and I don't  
16 know how that connects with what she has just testified to  
17 whether it is the same database, a different database,  
18 whether there is just some confusion on how it is referred  
19 to. So again, I am going to sustain the objection, but you  
20 can lay some foundation so we all know what we're talking  
21 about.

22 Q. (By Ms. Wyer) Ms. Vernon, you were describing  
23 before your role in the Oklahoma City bombing investigation  
24 and as discovery coordinator and the work that you did  
25 providing evidence to the defense counsel and your use of a



1 database in undertaking that job and providing that  
2 information to defense counsel.

3 Can you explain how that database that you are  
4 describing relates to the database that you're saying now  
5 that you did a search on?

6 A. The OK database would be my evidence database.  
7 It is one in the same. It was just one of the tools that we  
8 used for the investigation. It just happens to be under  
9 access. I mean it is the OKBOMB database.

10 Q. And is this an official FBI record system?

11 A. No, but neither is Zy.

12 Q. Um, so --

13 MR. TRENTADUE: Renew my objection, Your Honor. It is  
14 not being an official system. May I ask a couple of  
15 questions on voir dire in aid of this objection.

16 THE COURT: Yes, go ahead.

17 **VOIR DIRE EXAMINATION**

18 BY MR. TRENTADUE:

19 Q. Ma'am, we have heard testimony and seen  
20 affidavits about the ZyIndex. Are you familiar with that?

21 A. Yes, sir, I use that second.

22 Q. And that is a -- we understand that was set up as  
23 a stand-alone system to handle the record in the OKBOMB  
24 case; is that correct?

25 A. It was part of it, yes.

1 Q. Okay. The part of it being what is uploaded into  
2 it, correct?

3 A. Yes.

4 MR. TRENTADUE: Your Honor, I would -- they said this  
5 is not an official database of the FBI. We are hearing this  
6 now and this is the place we bring the witness on and say  
7 well I looked and can't find the tapes. I don't think that  
8 is proper and I object to it.

9 THE COURT: Is it your proffer that this is the base,  
10 the database of the search to be responsive to the FOIA  
11 request?

12 MS. WYER: Yes, Your Honor.

13 THE COURT: Objection is overruled. You may proceed.

14 **CONTINUED DIRECT EXAMINATION**

15 BY MS. WYER:

16 Q. So Ms. Vernon, can you just elaborate on why --  
17 why this database is now only on your computer?

18 A. Well, it is only on my computer because it is not  
19 used for anything else but OKBOMB and nobody else would use  
20 it at this time. I mean, if they search it, they can still  
21 search it through ACS. It was just the one I was familiar  
22 with and we used it as an investigative tool during the  
23 bombing investigation, sorry.

24 Q. And the OKBOMB investigation is now -- is it now  
25 still an open case?

1           A.    It is a closed case, ma'am.

2           Q.    Do you know when it was closed?

3           A.    It was closed after the state prosecution.  I  
4 want to say probably 2005-ish.

5           Q.    Can you continue explaining to the court how you  
6 went about searching the evidence database?

7           A.    I reviewed Mr. Trentadue's letter.

8           THE COURT:  Can you establish when she did this I  
9 think.

10          MS. WYER:  When?

11          THE COURT:  Yes.

12          Q.    (By Ms. Wyer)  Please explain -- you testified  
13 earlier that you received this request that is Exhibit 200.  
14 Did you receive that request -- do you remember when you  
15 were contacted about that request?

16          A.    I can't remember specifically when I was  
17 contacted, but I am sure it was shortly after  
18 Mr. Trentadue's letter.  So it would have -- I would have  
19 done it as soon as Mr. Trentadue sent his letter and then  
20 they forwarded it to me.  So more than likely it was done in  
21 2008.

22          Q.    Can you continue explaining how you started your  
23 evidence database search?

24          A.    What I did is I looked through his letter and  
25 looked at the key words and started basically searching for

1 items I knew existed. I knew we had a tape from the Regency  
2 Tower, I knew we had a tape from Charlie Hanger. And then I  
3 started using the word video or tape or surveillance or VHS  
4 or beta and kept searching it into the evidence database.  
5 And then what I would do is take and make notations of it  
6 and look at it and then I started a spreadsheet because once  
7 I used the word video I get hits. And then if I put the  
8 word tape in, I could get the same 1-B more than once. So  
9 to keep track of it and not have so much duplication, I went  
10 through and then I made the spreadsheet.

11 Q. So in your -- in the process of using general  
12 terms like tape and video, did you look at the database  
13 entries for every instance where a piece of evidence was  
14 identified as a tape or a video?

15 A. Yes, ma'am.

16 Q. Or a beta or a --

17 A. Every time that I got a hit on my search, I  
18 reviewed it and wrote it down. I started with a real big  
19 universe and just put down every tape.

20 Q. And do you know from your experience working with  
21 the OKBOMB database whether videotapes in the evidence are  
22 described in the database using the terms video, tape?

23 A. Sometimes they were, sometimes they weren't.  
24 Sometimes they said just tapes, sometimes it just said  
25 video.

1 Q. So but one or the other of those words?

2 A. Most of the time but every once in a while you  
3 would get where they didn't explain it with either word and  
4 it might say beta or VHS or obtained from surveillance  
5 camera. You sort of had to use all of the search terms  
6 because you weren't sure how the person actually put it into  
7 evidence.

8 Q. And did you account for all of that when you were  
9 selecting the terms to use?

10 A. Yes, I tried to think of every possible way you  
11 could describe it and just kept reusing those terms.

12 Q. And you said you created a chart to document the  
13 results?

14 A. I started a spreadsheet so I wouldn't keep  
15 re-looking at the same ones over and over.

16 Q. When you were doing the search, did you -- you  
17 had previously mentioned 1-A, 1-B, and 1-C as separate  
18 databases in the evidence database. Did you look at all of  
19 those or only one?

20 A. No, I -- I am pretty sure I started with 1-B  
21 because I knew that that is where most of the tapes would  
22 be. I did all of my search terms through the 1-Bs and then  
23 I did all my search terms through the 1-A database and then  
24 I did it again through the 1-C database.

25 Q. And did you finally come up with a -- how did you

1 determine then whether the tape that you found -- whether a  
2 particular hit in your results should be included on the --  
3 on the chart of responsive tapes?

4 A. After I got them all, I sat down and read them  
5 completely. So if it said it was obtained in Kansas City  
6 and it was a surveillance tape of Equity Standard  
7 Numismatics, I did not include it on my list. If it said it  
8 was a surveillance tape of the Total Pride or something that  
9 was downtown in Oklahoma City, I included it on my list.  
10 I -- if it was anywhere down in Oklahoma City I kept it. If  
11 it was way out there or like Mr. Mark Koernke giving a  
12 speech I knew that wasn't a surveillance tape so I just cut  
13 it out.

14 Q. And if you had any doubt about whether there was  
15 any question whether it might be responsive?

16 A. I put it on the list.

17 Q. And let me show you what is marked as Exhibit 211  
18 which has already been admitted into evidence. Is this the  
19 chart you're talking about that -- does this chart represent  
20 the final results of that process that you were describing?

21 A. Yes, ma'am.

22 Q. And can you explain to the court what the  
23 different columns are on the chart?

24 A. The first column is the evidence number and that  
25 is basically where I found it in the system and gave its

1 evidence number. Q or K number is what the lab puts on it.  
2 The date of the video is the actual date on the video if we  
3 had it. Acquired from was who provided it to us. And then  
4 the description shows -- explains what the tape was. And  
5 then relevance to Trentadue request, I put that column in  
6 there so the people that provided it could pick if it was  
7 relevant or not. And then the report referencing possession  
8 of the video is where I went later and searched for whoever  
9 picked it up, if they did a 302 or some type of  
10 documentation that they picked up the tape.

11 Q. And looking at the second to the last column,  
12 relevant to Trentadue request, could you further explain who  
13 that column was for?

14 A. At the time I knew I was sending them to Monica  
15 but I realized that Freedom of Information would make the  
16 FOIPA would make the final reduction. I concluded a bigger  
17 universe because I did not want to miss something.

18 Q. So Monica, meaning Ms. Mitchell, who just  
19 testified?

20 A. Yes. Yes, sorry.

21 Q. So you were leaving it to that office to make the  
22 final determination?

23 A. Yes. Because Freedom of Information really isn't  
24 my job category, so if I didn't want to second guess I gave  
25 everything I thought was relevant, but it doesn't mean that

1 I know what is relevant.

2 Q. But if you had any doubt, you would put it there?

3 A. I know that this eight page spreadsheet is more  
4 than what was asked on his request.

5 Q. And looking at the first columns, some of these  
6 numbers start with 1-A and some start with 1-B. Is that --  
7 do those indicate what you were talking about earlier with  
8 1-A, 1-B, and 1-C?

9 A. Yes, ma'am. That is -- I got those numbers by  
10 searching the different databases and then that is how I  
11 kept track of it if I had it or not.

12 Q. So the items identified here as 1-A would be  
13 results that you found through searching the 1-A system?

14 A. Yes, ma'am. And in the 1-A database not only  
15 does it have the main file, it has the sub-files also. So  
16 if there was a tape in a sub-file it would show sub like in  
17 the report thing where it says sub W 1-A 13, if there was a  
18 video in a sub file it would have been caught when I did the  
19 1-A search, 1-A database search.

20 Q. And the descriptions under description of video,  
21 where did those descriptions come from?

22 A. They came from the database.

23 Q. And where is -- okay. And so after you completed  
24 this search of the database, what did you -- did you do any  
25 further steps in your search?



1           A.    After I finished the database searches of the  
2           1-A, 1-B, and 1-C, I then searched ACS because I didn't want  
3           to miss anything. I didn't want to not get a tape in case I  
4           just messed up the search. So after I did that, I basically  
5           went into ACS and started searching.

6           Q.    And when you say ACS, could we look at what has  
7           been admitted as Defendant's Exhibit 248 which is in your  
8           binder is called ACS diagram.

9           A.    Yes, ma'am.

10          Q.    Looking at this, can you explain to the court  
11          which system in here you are referring to when you say ACS?

12          A.    The evidence is under the Investigative Case  
13          Management and I went into there and then I went into the  
14          collected item and then I went into list collected items.  
15          And when you do list collected items, you can ask for 1-A,  
16          1-B or 1-C. And I did the same thing, I went through every  
17          one of them. But you can go down in the bottom and there is  
18          a field that is called description. So I put my same search  
19          words that I used for my database in tape, video and  
20          searched and then you can print screen where it just tells  
21          you what 1-B it is and what the description is. So I  
22          printed those out and then put them aside and sat there and  
23          double-checked them against what was on my spreadsheet.

24          Q.    And through that process did you identify any  
25          additional tapes?

1           A.    No, ma'am.

2           Q.    And then did you expect that you would be able to  
3 locate additional tapes through that search?

4           A.    Didn't really expect to find anything new, no.

5           Q.    And then after you did that search, did you do  
6 any additional search?

7           A.    Because Mr. Trentadue requested documentation of  
8 how we got the possession of the videos, I then went into Zy  
9 and started searching the same way. But after I had my  
10 spreadsheet I started first searching for the specific  
11 places we had found tapes because to put the word video in  
12 or tape gives you so many hits it is hard. I was trying to  
13 narrow the search at first to find these but then I also  
14 just started searching all of it. And then I would sit and  
15 review the documents that were in there to see if they  
16 pertained to this.

17          Q.    And so looking at the chart, did you record those  
18 results?

19          A.    Yes, ma'am, I did. That is where the -- where  
20 the D-3413 came in. It is the sub file that the report was  
21 in.

22          Q.    And are these like the serial numbers here in the  
23 last column of this chart?

24          A.    Yes. I mean if you wanted to be more correct,  
25 you would put 174A-0C-56120-D dash then the serial number

1 but we knew they all came out of the OKBOMB file that is why  
2 I only put the sub file and the serial number.

3 Q. And if there had been additional tapes identified  
4 in the -- let's back up so you can explain to the court what  
5 the ZyIndex system is?

6 A. The ZyIndex was a system used where we would  
7 download the text of documents so that you could do text  
8 retrievable searches.

9 Q. And was that system set up specifically for the  
10 OKBOMB investigation?

11 A. It can be used by any investigation. I mean you  
12 can request it. People come in and set it up and they  
13 basically pick which files they want in there and they just  
14 upload it. Because FOIMS had no upload capability, you  
15 couldn't do text searches, they chose to use Zy because they  
16 knew it was going to be a big case and have so many people  
17 looking at it. Zy was on everyone's computer in the command  
18 post so people could do their own Zy searches.

19 Q. And the ZyIndex system that you're talking about,  
20 was it devoted exclusively to the OKBOMB investigation?

21 A. Yes, that is the only case that was in the Zy  
22 that we had.

23 Q. So ZyIndex system is something that is not like a  
24 category of things that can be set up and then devoted  
25 exclusively to particular subject matter or set of records?

1           A.    It is usually case specific.  I mean there could  
2           be five instances of Zy being run in the OK -- in the FBI,  
3           but we only had the OKBOMB one, we didn't have any others.

4           Q.    What kind of documents are in the OKBOMB ZyIndex?

5           A.    OKBOMB ZyIndex has teletypes, which we no longer  
6           use, ECs, 302s, inserts, and lab reports.

7           Q.    Can you explain to the court what you mean by a  
8           302?

9           A.    A 302 is an interview of someone.

10          Q.    And who prepares a 302?

11          A.    The 302 is prepared by the agent once he  
12          interviews someone.

13          Q.    And does the agent put in that document his  
14          assessment of the accuracy of the information?

15          A.    No, ma'am.  He just -- he just basically writes a  
16          report of what the person told him.

17          Q.    So if the FBI had interviewed someone during the  
18          bombing who said their mother-in-law had committed the  
19          bombing, would that be recorded in a 302?

20          A.    Yes, it would have.

21          Q.    And would that mean that that was accurate?

22          A.    It is what she told him.  I mean it would be  
23          wrong, yes, but that is what she believed.  And 302s are put  
24          in the sub B file.

25          Q.    So, again, going back to the search that you did,

1 um, why did you choose to -- I think you explained this but  
2 why did you choose to search the ZyIndex at that point?

3 A. Because I needed the text to find out how they  
4 obtained the videos. My database was just the evidence, it  
5 was no 302s or inserts. There was a 302 insert database,  
6 same deal it was made so we could provide it to the defense,  
7 but also what it had was basically the date, the person who  
8 was interviewed, the serial number, how many pages, the  
9 agent that interviewed them. It was just like in my case if  
10 they interviewed me it would say Linda Vernon, April 19,  
11 serial whatever. It didn't have any text in it. So I  
12 needed Zy to find the 302 or insert of where they picked up  
13 the video.

14 Q. And if the ZyIndex had information about tapes  
15 that you had not found through your evidence database  
16 search, would you have found those through the ZyIndex  
17 search that you did?

18 A. If there was a tape that I didn't find, yes, I  
19 could have found it in Zy. It wouldn't have the evidence  
20 number, it would have the interview, lack of better term  
21 report of picking it up, but more than likely they didn't  
22 always tell you what 1-B it went back to. So I would have  
23 had to search back either in my -- in the ACS or my evidence  
24 database for it.

25 Q. And did you find any additional tapes through

1           that search?

2           A.    No, ma'am.

3           Q.    So essentially now you have described three  
4           different searches that you did of the evidence database,  
5           the ACS collected items, and the ZyIndex.  Is there any  
6           other search that you did at that time?

7           A.    No, ma'am.

8           Q.    And after you did that search and compiled this  
9           list in Exhibit 211, what did you do?

10          A.    After I got the spreadsheet all together I  
11          e-mailed it to Ms. Mitchell so they could start looking at  
12          it.  And basically I was like saying okay you start telling  
13          me what you want copies of because we still had to copy all  
14          of the videos.  And in Zy, there is a report but it is not  
15          the official report of a 302 or insert, so we still had to  
16          go to the warehouse and copy the official reports where it  
17          had the agent's signature and the serial numbers and all.  
18          Sometimes Zy -- it had all of the information but sometimes  
19          it just didn't look right when you printed it out.

20          Q.    So when you say report, are you saying that the  
21          FBI record that you found was actually there in the ZyIndex?

22          A.    It was a copy of it.  I mean it was the upload of  
23          it but the original was at the warehouse.  So I wanted to  
24          make sure we gave him exact copies of the original of the  
25          reports so we went to the warehouse and pulled these and

1 copied them.

2 Q. Now, this is the first time you have mentioned  
3 the warehouse. Can you explain to the court what you mean  
4 by the warehouse?

5 A. Because the Oklahoma City bombing case was so big  
6 it wouldn't fit in the Oklahoma City Field Office. So when  
7 it was brought back from Denver, it was put in its own  
8 stand-alone warehouse.

9 Q. And is all of the evidence that is identified in  
10 your evidence database in that location?

11 A. Yes.

12 Q. And what about the paper documents that you were  
13 just describing?

14 A. The warehouse is set up to two sides. One side  
15 is the file which has all of the files and all of the 1-As  
16 with them and it is in filing cabinets on one side. And  
17 then on the other side is the evidence. And because it is  
18 under lock and key and only certain people can go in there,  
19 it has its own separate locked section of the warehouse.

20 Q. And the last part where you were referring to it,  
21 did you mean the evidence side that it has its own lock and  
22 key?

23 A. Yes, I'm sorry. The evidence side which contains  
24 all of the 1Bs and 1Cs has its own side which is under lock  
25 and key, and only evidence control technicians can go in

1           there or have a key to it.

2           Q.     And your understanding, based on your experience,  
3           how -- is it likely that anything related -- any OKBOMB  
4           materials are in any other location?

5           A.     No, ma'am.

6           Q.     So you were describing a process of collecting  
7           all of the items that you had identified.  Could you  
8           continue explaining what was done?

9           A.     After we realized what tapes we needed, I then  
10          went to the warehouse and took the -- some of the tapes --  
11          most of the tapes had been copied for discovery.  So when we  
12          made them for discovery, we made an exact copy of the tape  
13          and kept it for us in case there was a question with the  
14          defense attorneys.  So basically I went to the warehouse and  
15          started pulling all of the tapes we had copies of to save  
16          time because I knew if it is a two-hour tape, it takes two  
17          hours to copy it.  It is not high speed, we didn't have a  
18          high speed copier.  So what I did is started pulling the  
19          tapes.  And then I gave the spreadsheet to one of the  
20          employees in the office and said we're going to need -- I am  
21          going to find all of the tapes I can, but we're going to  
22          need all of the chains of custody on the evidence so they  
23          can be provided, too.

24          Q.     And by that do you mean what is known as a 198-2?

25          A.     The FD-192 is like the cover that shows how they



1 got it and then behind it is where everybody signs for it to  
2 take the evidence out of the bulky room.

3 Q. So did you provide -- and what did you do after  
4 you -- did you gather copies of every item that is  
5 identified in this chart?

6 A. After I pulled all of the tapes I had in  
7 discovery, then I went through and gave the list to them and  
8 said hey, we need to pull these tapes to make a copy for  
9 Mr. Trentadue or for headquarters to send to Mr. Trentadue.  
10 Once we get all of the tapes copied and all of the interview  
11 notes or reports and then all of the chains of custody, I  
12 boxed them up and sent them to Monica Mitchell.

13 Q. And just to clarify what you were saying about  
14 the tapes, you first looked for discovery copies?

15 A. Yes, because I knew it was an exact copy of the  
16 original. Because when we did it for discovery, we made  
17 sure we made a copy and I was just trying to save time.

18 Q. So if you found a discovery copy, was that the  
19 actual tape that you then sent?

20 A. I put in the box to send to them.

21 Q. And then if you did not find a discovery copy, is  
22 that when you would --

23 A. We pulled it, we would have usually the lady go  
24 get them, we take them down. It happens to be in the ELSUR  
25 room because that is where they had -- ELSUR, E-L-S-U-R, the

1 ELSUR room is where the video copy machines are. So we went  
2 in there and we copied them and then we took that copy, the  
3 exact copy, and put it in the box for -- to be provided to  
4 Mr. Trentadue and then the originals were put back in the --  
5 sent to the warehouse.

6 Q. And were any edits or redactions made to those  
7 tapes before they were provided to RIDS?

8 A. No, ma'am, but some of the tapes had already been  
9 redacted for the fact that the Regency Tower tapes are in  
10 realtime which means that it bounces like there are four  
11 things and it bounces real quick. During the investigation,  
12 those had been copied to slow down or as they call it  
13 realtime so can you see it. So some of them had been  
14 already reproduced so you could review them. Also at that  
15 time we realized that we didn't have a copy of 1-B-200.

16 Q. And 1-B -- what did you say 1-B-200 was?

17 A. 1-B-200 was the Charlie Hanger or tape, the  
18 Oklahoma Highway Patrol Tape.

19 Q. So what did you do at the time that you realized  
20 you did not have -- what do you mean by you did not have  
21 that tape?

22 A. For some reason I didn't have it in my discovery,  
23 we didn't have it in the trial exhibits, we didn't have it  
24 in the office. It was found out that it had been returned  
25 to the Highway Patrol.

1 MR. TRENTADUE: Objection, speculation, foundation.

2 THE COURT: Yeah, this is a sensitive issue so would  
3 you lay careful foundation how she discovered what she is  
4 about to testify to.

5 Q. (By Ms. Wyer) Could you just explain to the  
6 court exactly how -- what you -- from your -- from what you  
7 know, what was the situation with that particular tape?

8 A. Okay. Um, like I said, first I checked for it  
9 where places where I thought I could find it. I asked for  
10 it from evidence. It wasn't in evidence. And then I went  
11 into ACS and looked at the chain of custody and realized it  
12 had been returned to the Highway Patrol.

13 Q. And again, could you identify which part of ACS  
14 you were looking at?

15 A. I went in to the case -- let me use my chart.  
16 I --

17 Q. Looking at again at --

18 A. I looked at -- yeah, I went to ICM, then I went  
19 to collected items, and then I put in 1-B-200 and then I  
20 looked at the list chain of custody and then I viewed the  
21 chain of custody and realized that the tape had been  
22 returned to the Highway Patrol. Actually, at the time, it  
23 was returned to a Highway Patrol officer that was tasked in  
24 our office and they gave it to him to take it back to the  
25 Highway Patrol.

1 Q. And so what did you do at that point in regard to  
2 trying to provide the plaintiff with some -- with that tape?

3 A. Um, it was returned by the CDC at the time and we  
4 went to him to reach out to the Highway Patrol to get a copy  
5 of the tape.

6 Q. So when you provided material to RIDS, was that  
7 tape included in what you provided?

8 A. That is how it got put on the CD. That is how  
9 they provided it to us. That is why it is only on a CD. We  
10 put it in the box with the rest of them and it was shipped  
11 off to Monica Mitchell.

12 Q. And did the FBI Field Office make any edits or  
13 redactions to that tape before it was sent to RIDS?

14 A. No, ma'am.

15 Q. So after you sent the material and your list to  
16 RIDS at FBI headquarters, were you later asked to provide  
17 additional assistance in regard to the plaintiff's request?

18 A. Yes, ma'am.

19 Q. And what were you asked at that time?

20 A. At that time, I was advised that Mr. Trentadue  
21 had amended his original request and I was provided a copy  
22 of the amended request.

23 Q. Could we look at Defendant's Exhibit 203. Again,  
24 this is a letter from Mr. Trentadue to the FBI dated  
25 April 13, 2009. Is this what you were provided?

1 A. Yes, ma'am.

2 Q. Or at least the description that is on it here?

3 A. Um, actually, I think they e-mailed it to me, but  
4 this is the search terms I remember using.

5 Q. So can you explain what you did at that point in  
6 order to -- what were you asked to do in regard to this?

7 A. Um, I was asked to search again for these  
8 specific tapes and then see if I had them or, you know, make  
9 sure that these tapes were included, these places were  
10 included in my original search.

11 Q. And what did you do in responding to that  
12 request?

13 A. I basically took the 11 places and searched again  
14 and specifically looked for tapes for these places and then  
15 double checked against my spreadsheet and told them which  
16 ones were on the spreadsheet.

17 Q. Were you able to identify tapes responsive to  
18 this request using your spreadsheet?

19 A. Yes, ma'am.

20 Q. And did you then communicate the results?

21 A. I sent an e-mail to Monica, Ms. Mitchell, and I  
22 let -- numbered them exactly the same way, 1 through 11, and  
23 told them why I didn't have a tape or if I didn't have a  
24 tape and then 1-B, 1-A was responsive to their numbers. I  
25 matched it back that way.

1 Q. And looking at Defendant's Exhibit 213, I wanted  
2 to show you exactly -- you have your list in Exhibit 211, I  
3 wanted to show you a highlighted version?

4 A. Okay.

5 Q. And I guess just as a highlighted version just as  
6 a demonstrative to illustrate something. We would mark this  
7 as Defendant's Exhibit 249.

8 MS. WYER: May I approach?

9 THE COURT: Yes.

10 Q. (By Ms. Wyer) Now, looking at this highlighted  
11 version of your chart, can you explain whether the  
12 highlighted items here are the items that you identified to  
13 Ms. Mitchell as responsive to the narrowed request from the  
14 plaintiff?

15 A. Yes, ma'am, they are.

16 MS. WYER: And defendant moves to admit Exhibit 249.

17 MR. TRENTADUE: No objection, Your Honor.

18 THE COURT: Exhibit 249 is received.

19 (Whereupon, Defendant's Exhibit 249 was received  
20 into evidence.)

21 Q. (By Ms. Wyer) Did you keep track of the time  
22 that you spent performing any part of the search?

23 A. Back when the first request came in, yes, I did.

24 Q. And let's look at Defendant's Exhibit 212?

25 A. Yes, ma'am.

1 Q. Do you recognize that document?

2 A. Yes, ma'am.

3 Q. Let the record reflect that this is a chart or a  
4 spreadsheet titled Time Worked on Trentadue III by FA Linda  
5 Vernon. And what does this reflect?

6 A. This reflected the times that I worked on the  
7 request from November 2000 -- November 6, 2008, to  
8 January 23rd, 2009.

9 Q. And did you prepare this and keep this?

10 A. Yes, ma'am, I did.

11 Q. And how, according to your records, how many  
12 hours did you spend on the search up through January 23rd,  
13 2009?

14 A. 85 and a half.

15 MS. WYER: Defendant moves Exhibit 212 into evidence.

16 MR. TRENTADUE: No objection, Your Honor.

17 THE COURT: Exhibit 212 is received.

18 (Whereupon, Defendant's Exhibit 212 was received  
19 into evidence.)

20 Q. (By Ms. Wyer) And then since this spreadsheet  
21 stops there, did you spend additional time that is not  
22 recorded?

23 A. Yes, ma'am.

24 Q. And have you actually been -- after you  
25 identified the records responsive to the narrowed request,

1 have you been contacted over time since 2009 to the present,  
2 have you been contacted about other inquiries from the  
3 plaintiff?

4 A. Yes, ma'am.

5 Q. And have you been provided with material that the  
6 plaintiff has sent to the RIDS office or to counsel?

7 A. Yes, ma'am.

8 Q. And have you attempted to review that material to  
9 see if it provides any way -- or what have you done when you  
10 have received that material?

11 A. Um, some of the material I would read it and see  
12 if it would give me an idea how to search again. Some of it  
13 I would search it to see what the, for instance, news  
14 article if it was accurate or true or any way actually fit  
15 our records. So then I would search into Zy basically and  
16 see if I could find any information that was close to what  
17 was in the report.

18 Q. And through those processes, did you identify any  
19 other responsive tapes?

20 A. No, ma'am.

21 Q. Did you find that those documents provided  
22 information that could be used to locate responsive tapes?

23 A. Not really.

24 Q. And can you explain why that is?

25 A. For instance, um, on the Charlie Hanger tape,



1 what that tape that you saw is what it is Mr. -- after we  
2 reviewed it several times, somebody asked Mr. Hanger and he  
3 said that he had just got that dashboard camera and he truly  
4 didn't know --

5 MR. TRENTADUE: Objection hearsay, Your Honor.

6 THE COURT: Overruled because it is relevant to the  
7 information they were acting upon.

8 THE WITNESS: Um, so finally somebody basically asked  
9 Mr. Hanger why it doesn't show the arrest of Mr. McVeigh.  
10 And he said I honestly didn't know how to work the camera.  
11 I thought I turned it on earlier. And if you will notice  
12 that he has a couple of different times at the beginning.

13 MR. TRENTADUE: Renew the objection on hearsay.

14 THE COURT: Could we lay a foundation exactly who it  
15 was that told this witness that information. Did she  
16 interview Mr. Hanger or is she getting this second or third  
17 hand from somebody else that interviewed Mr. Hanger?

18 Q. (By Ms. Wyer) Ms. Vernon, do you recall how you  
19 heard about what you're describing?

20 A. The CDC at the time contacted Mr. Hanger.

21 THE COURT: Who is the CDC?

22 THE WITNESS: John Mabry. He is no longer an FBI  
23 employee. He contacted Mr. Hanger because he is the one who  
24 gave it back to the Highway Patrol in asking what happened.  
25 I also saw Mr. Hanger at an event at the memorial and he

1 told me the same story. He just didn't know the new  
2 technology.

3 MR. TRENTADUE: Renew the objection. Hearsay. Move  
4 that the testimony be stricken.

5 THE COURT: I'm going to receive it not for the  
6 truthfulness of the information, but for the fact that that  
7 is what this witness was operating on.

8 Q. (By Ms. Wyer) Now, how confident are you that  
9 the searches that you did located every tape that could be  
10 found if it existed that would match the descriptions that  
11 the plaintiff provided?

12 A. Completely confident.

13 Q. So is your testimony that if -- if, um, going to  
14 the other tape that the plaintiff specifically was seeking  
15 showing a bomb detonation at the Murrah Building that the  
16 search that you did, would that -- would that have found a  
17 tape matching that description if that tape existed?

18 A. Yes, it would.

19 Q. Now, let me show you Exhibits 245 and 246 that  
20 have been already admitted into evidence. Could you  
21 explain -- do you recognize those documents?

22 A. Yes, ma'am.

23 Q. And how do you -- let the record reflect that  
24 these are the exhibit lists for the McVeigh and Nichols  
25 prosecutions. How do you recognize those documents?

1           A.    Um, because I stayed up in Denver the whole time  
2 these are the trial exhibits. And as I said earlier, part  
3 of the evidence database had part of it was the trial  
4 exhibits. Um, I helped them get the trial exhibits together  
5 for each of the trials. And at some point I also printed  
6 out the trial exhibits to give to the State of Oklahoma when  
7 they prosecuted Terry Nichols. So I am not sure if -- I  
8 don't know who printed them out, but I had the capability of  
9 printing them out.

10           Q.    Do you recognize these as the trial exhibits for  
11 those --

12           A.    Yes, ma'am.

13           Q.    -- for those cases?

14           A.    Yes, ma'am.

15           Q.    And is there anything on these exhibits that  
16 suggest any other method that could be used here to find  
17 additional records responsive to the plaintiff's request?

18           A.    No, ma'am.

19           Q.    And do these lists identify any other location  
20 that would be likely to contain tapes matching plaintiff's  
21 descriptions?

22           A.    No, ma'am.

23           Q.    Now, did any of the tapes on your list in  
24 Exhibit 211 contain footage from cameras on the Murrah  
25 Building?

1           A.    No, ma'am.

2           Q.    Did any of the tapes contain footage showing the  
3 bomb detonation?

4           A.    No, ma'am.

5           Q.    And have you ever seen or heard of such footage  
6 during your experience working with OKBOMB evidence?

7           A.    In the evidence, no.

8           Q.    And what do you mean?  Are you qualifying that in  
9 some way?

10          A.    I now heard some news reports that there is  
11 supposedly a tape, but I have never seen it.  And I have  
12 never heard it in the FBI record.

13          Q.    Do you think that you would have heard about it  
14 as -- if the FBI had collected a tape?

15          MR. TRENTADUE:  Objection foundation.

16          THE COURT:  Sustained.

17          Q.    (By Ms. Wyer)  As discovery coordinator for the  
18 -- for the McVeigh and Nichols prosecutions, do you think  
19 that you would have heard of it or become aware of it if  
20 such a tape had been collected by the FBI?

21          A.    Yes, ma'am.

22          Q.    Based on your experience with OKBOMB records and  
23 evidence, were the searches that you did and that you have  
24 described the only ways of searching that would be likely to  
25 locate records responsive to the plaintiff's request?

1 MR. TRENTADUE: Objection, that calls for legal  
2 conclusion. That is for the court to decide.

3 THE COURT: Sustained.

4 Q. (By Ms. Wyer) Would you, after locating the  
5 tapes and documents that you found through their search, can  
6 you think of any other search method based on your  
7 experience that you would expect to locate additional  
8 material that would be responsive to the plaintiff's  
9 request?

10 A. No, ma'am.

11 Q. And can you identify any other office or location  
12 within the FBI that you would expect to have additional  
13 responsive records?

14 A. No, ma'am.

15 MS. WYER: No further questions.

16 THE COURT: Cross-examination?

17 MR. TRENTADUE: Yes, Your Honor. If I could impose  
18 upon the court, I think we can finish this witness today, if  
19 we could have about a 15 minute recess.

20 THE COURT: Sure. Let's take a 15 minute break.

21 MR. TRENTADUE: Could we make it 20 so I can go  
22 retrieve some evidence that has become relevant from this  
23 testimony.

24 THE COURT: We will take a 20 minute recess.

25 MR. TRENTADUE: Thank you.

1 (Recess.)

2 THE COURT: We are back in session in Trentadue versus  
3 the FBI. You may proceed with your cross-examination.

4 MR. TRENTADUE: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. TRENTADUE:

7 Q. Ms. Vernon, if you would look in the blue binder  
8 at Exhibit 10, page 13, paragraph 35. If you would read  
9 that paragraph into the record for me, ma'am, this is from  
10 -- first of all this is already in evidence I think.

11 A. Okay.

12 Q. This is in Mr. Hardy's declaration, I want to get  
13 it right, describing the search that was conducted in  
14 Oklahoma City. If you would read that allowed for me,  
15 please.

16 A. "In an effort to locate material responsive to  
17 plaintiff's requests, OCFO personnel conducted burdensome  
18 text searches of the ZyIndex using the following search  
19 terms, including spelling and wording variations: Murrah  
20 Federal Building; Journal Record Building; Regency Tower  
21 Apartment Building; U.S. Post Office; Water Resource  
22 Building; South West Bell Building; YMCA Building; U.S.  
23 Federal Courthouse; Old U.S. Federal Courthouse; Former  
24 Oklahoma City Main Library Building; parking lot at the  
25 northwest corner of 6th Street and Hudson, N.W.; Ryder

1 truck; Hanger; Oklahoma Highway Patrol; OHP. OCFO personnel  
2 also conducted burdensome "generic" text searches using  
3 terms: surveillance; video; tape; and camera. These  
4 generic text searches produced hits that OCFO personnel then  
5 reviewed for responsiveness."

6 Q. Now, ma'am, you described a search you did, but  
7 you also told me that, and I don't want to mislead you or  
8 misrepresent what you said, but the bulk of the search was  
9 your own private database?

10 A. Yes, sir, I did say that but I also searched Zy  
11 and I searched it as much as I searched my database.

12 Q. I'm not saying you didn't. But this is what  
13 Mr. Hardy says was done. And you tell us that your private  
14 database and --

15 A. It is not my private database, sir. I didn't  
16 build it.

17 Q. But it is yours now, I take it?

18 A. It is mine because it is -- actually I don't know  
19 that it worked on another computer, but yes, it is on my  
20 computer.

21 Q. No one else has it?

22 A. Not that I know of, no.

23 Q. And I -- also, as I understood it, you found a  
24 lot of material, and to be fair to me, you said that  
25 Mr. Hardy says that a generic text searches produced hits

1 that OCFO personnel then reviewed for responsiveness. I  
2 take it from what you testified to is you were not going to  
3 make that call? You gathered up the documents that you  
4 thought were responsive, and you sent it back to  
5 Ms. Mitchell?

6 A. I did review it for responsiveness, yes, sir.

7 Q. You weren't making the final call?

8 A. No, I wouldn't make the final call. That is not  
9 my job classification. So I am not sure -- I do not know  
10 all of the particulars of Freedom of Information request or  
11 what you're supposed to get. So no, sir, I would never make  
12 the final call.

13 Q. No. And what I heard you say, and again I don't  
14 want to mischaracterize your testimony, is if there was any  
15 doubt you included as responsive and you sent it to them so  
16 they could make the call?

17 A. Yes, sir. Because I didn't want to narrow your  
18 scope and misunderstood what you were actually asking for.

19 Q. Now, we have heard here today for the first time  
20 that the Hanger videotape, the original tape, was returned  
21 to Mr. Hanger?

22 A. No, it was returned to the Oklahoma Highway  
23 Patrol.

24 Q. Okay. Well we heard for the first time that the  
25 FBI no longer has it?



1 A. Correct.

2 Q. And you discovered that?

3 A. I discovered it when I -- it showed the chain of  
4 custody we no longer had it.

5 Q. How long ago was that?

6 A. I think it was returned in 2006.

7 Q. But when did you discover that it had been  
8 returned?

9 A. When we had to find a copy of the tape to provide  
10 to you so it would have been in 2008 or 2009.

11 Q. And I am assuming you told Ms. Mitchell or  
12 someone back at FOIA headquarters that you no longer had the  
13 original?

14 A. Um, I don't remember specifically me telling her  
15 that, but I am sure somebody told her. I don't know.

16 Q. And you don't know personally what the original  
17 looked like?

18 A. I remember seeing parts of it during -- while the  
19 investigation was going on, no, I have never -- I didn't sit  
20 down and review the whole thing, no.

21 Q. Okay.

22 A. I will be honest with you, sir, I had people that  
23 helped me copy stuff. I know my discovery team copied it.  
24 But no, I was not in the room when it was copied.

25 Q. Okay. But you had to go back to -- years later

1 you go back to the Oklahoma Highway Patrol and obtained the  
2 original and make a copy?

3 A. I am not sure how Mr. Mabry got it. I know that  
4 is where the copy came from. I mean that is what I was told  
5 but I did not do it.

6 Q. No. And I am not saying you did. And you also  
7 told me that some of the other surveillance tapes that I had  
8 been given had been redacted?

9 A. No, I did not say that they were redacted.

10 Q. Well, they had been edited?

11 A. They had been -- a lack of a better term made so  
12 you could view them and they were made years ago when the  
13 bombing happened because I am not sure if you have ever --  
14 one of the -- have you reviewed the Regency --

15 MR. TRENTADUE: Objection, Your Honor, nonresponsive.  
16 Move to strike.

17 THE COURT: Let me just again caution you just listen  
18 carefully to the question and answer only the question. If  
19 there is a further explanation needed, Ms. Wyer will ask you  
20 about it.

21 THE WITNESS: No, sir, they weren't redacted.

22 Q. (By Mr. Trentadue) Okay. But whatever was done  
23 to them you didn't do it?

24 A. No.

25 Q. Okay. And so you really don't know what was done

1 to them?

2 A. No, sir, I don't.

3 Q. And there has been a lot made about the time you  
4 spent and I appreciate the time you spent on my FOIA  
5 request, but I was charged for that time and paid it  
6 accordingly, didn't I?

7 A. I assume. I don't know. They just --

8 MS. WYER: Objection, Your Honor. Assumes facts not  
9 in evidence.

10 THE COURT: Overruled.

11 MS. WYER: And relevance.

12 Q. (By Mr. Trentadue) Now, it sounds like you work  
13 very closely with the, for lack of a better word, the OKBOMB  
14 file?

15 A. Yes, sir.

16 Q. You said you have seen about every document in  
17 there?

18 A. Yes, sir.

19 Q. And you are still working on the file, I assume?

20 A. Um, not unless it is for a request like this. I  
21 am back to doing my normal job.

22 Q. I wonder if you could look at Plaintiff's  
23 Exhibit 44. Do you recognize this document?

24 A. I have just seen it recently, yes. I didn't see  
25 it before then.

1 Q. You say recently. How recently? Just today?

2 A. Yes.

3 Q. Did I show it when I showed it to you now?

4 A. No, actually I saw it yesterday.

5 Q. Okay. What do you understand this to be?

6 A. I understand -- it looks like a teletype, I mean  
7 an EC, sir.

8 Q. And it says, "It has been brought to my attention  
9 that the OKBOMB file is restricted and some of you have not  
10 been able to upload documents." DTOU unit, what is that?

11 A. Honestly I don't -- I don't know that unit.

12 Q. "Chief blank advised that we are to e-mail all  
13 documents related to the Nichols search and any related  
14 entities to blank at OKC. Also follow this with hard copies  
15 of the documents. She will upload them there. Any problems  
16 call me."

17 Do you have any idea who they're referring to when  
18 they say she?

19 A. I am going to assume an Oklahoma City employee.

20 Q. Had you known that the OKBOMB file was a  
21 restricted file?

22 MS. WYER: Objection, Your Honor, this is  
23 mischaracterizing the document.

24 THE WITNESS: Well --

25 THE COURT: I am going to sustain the objection on the

1 grounds that the way it is phrased it assumes a fact that is  
2 not yet in evidence. But you can -- you may rephrase the  
3 question. Ask if it was a restricted file.

4 Q. (By Mr. Trentadue) Um, do you know whether or  
5 not it is a restricted file?

6 A. Um, actually, sir, I think it is a closed file.  
7 And the date on this is April 6th, 2005. This was long  
8 after the OKBOMB investigation was finished. This relates  
9 to another matter.

10 Q. I think you said that about your familiarity with  
11 the file, the documents in the file?

12 A. Yes, sir.

13 Q. Now, I want you to look at Exhibit 35 in the  
14 plaintiff's section?

15 A. Yes, sir.

16 Q. Do you recall seeing this document before?

17 A. Yes, sir.

18 Q. It has all of the markings, would you agree with  
19 me, of being an Oklahoma City bombing OKBOMB document? It  
20 has a case number which is 174A-OC-56120 sub D serial 453 --  
21 4553. Do you know John Hippard?

22 A. He is a retired agent, sir.

23 Q. Yes. Is this one of the documents that you  
24 recovered as potentially responsive and sent on to  
25 Ms. Mitchell?

1           A.    Sir, I don't think it is.

2           Q.    Well, if you look, ma'am, if you look here it has  
3 how many of the different terms. It says Journal Record  
4 Building, videotape, Journal Record Building, camera,  
5 camera, Murrah Federal Building, video camera, video, video,  
6 videotape, videotape, video, videotape, video, video. One  
7 of those terms should have kicked out if I understood your  
8 testimony?

9           A.    Oh, I got this document, but you asked for the  
10 documents that provided it to the FBI. This document shows  
11 one agent providing it to another agent. I provided in your  
12 request the 302 of Mr. Legleiter putting it into evidence.

13          Q.    Well, this says that Mr. Payne provided the  
14 videotape?

15          A.    To Mr. Hippard. Mr. Hippard didn't put it into  
16 evidence, Mr. Legleiter did.

17          Q.    So this was one that wasn't sent?

18          A.    Not to my knowledge. I don't think it is on my  
19 spreadsheet, no.

20          Q.    And if you would look at Exhibit 37 --

21          THE COURT: Let me make sure I'm clear on this. Is  
22 this a document that you found during your search or not?  
23 That is Exhibit, Plaintiff's Exhibit 35?

24          THE WITNESS: One second, Your Honor. When I did my  
25 search, yes, I found it. I did not include it.

1 THE COURT: Did you -- and you didn't send it to the  
2 -- to Ms. Mitchell?

3 THE WITNESS: No, sir, I did not.

4 THE COURT: You made a decision yourself not to  
5 forward this document?

6 THE WITNESS: Because I read his description and he  
7 asked for when it was provided to evidence.

8 THE COURT: A little while ago you testified that you  
9 always erred in the side of including documents if there was  
10 any doubt. What was it that led you to believe that this  
11 document should not be sent and let someone who understood  
12 the Freedom of Information Act make the decision?

13 THE WITNESS: Just the way it was worded, sir. It  
14 showed that it was just mainly Mr. Payne gave it to  
15 Mr. Hippard. It doesn't really say that it -- I mean in  
16 Mr. Legleiter's 302, I'm assuming it had more information  
17 that is why I picked it at that point.

18 THE COURT: But this document seems very much on point  
19 as to the request that was made, does it not?

20 THE WITNESS: And he got the videos for this document,  
21 yes, sir.

22 THE COURT: But you made the decision, on your own,  
23 without consulting with anyone else, to exclude this  
24 document; is that correct?

25 THE WITNESS: Yes, sir, the way I read it in 2008. I

1 mean I am not going to say I completely didn't read it  
2 differently there but that is how I see it now.

3 Q. (By Mr. Trentadue) And if you look at the last  
4 sentence in the first paragraph, "Payne noted that the video  
5 camera in question was blown off the wall, so there is no --  
6 there is likely no video after the time of the blast." And  
7 he also states in there, does he not, ma'am, Hogan you say  
8 is the other agent, "Hogan thought that the camera on that  
9 side of the building may have obtained some type of  
10 photograph of the persons responsible for the bombing of the  
11 Alfred P. Murrah Federal Building on that date." It says  
12 that, doesn't it?

13 A. It says it in the interview, yes, sir.

14 Q. And you knew from at least reading my request,  
15 that that is what I was looking for, wasn't it?

16 A. But we provided the tape, sir.

17 Q. You provided a tape, ma'am?

18 A. I --

19 Q. I am not quarreling, I'm not attacking you,  
20 ma'am. I'm just saying --

21 A. We provided a tape from The Journal Record.

22 Q. If you look at 37, please, and this is another  
23 one that you didn't give me, isn't it, ma'am?

24 A. 302, sir?

25 Q. Number 37?



1           A.    Yes, the number -- Plaintiff's Number 37, the  
2           302.

3           Q.    Yes.  It says, "On October 26, 1995, SA William  
4           Eppright the Third reviewed the contents of sub file W 1A23.  
5           The 1A envelope contains an Oklahoma City Police Department  
6           report dated 4/24/95 by Sergeant Ritch L. Willis.  The  
7           report states that Sergeant Willis recovered a videotape  
8           from the security camera at the Regency Towers Apartments."  
9           And this is one I didn't get also, isn't it, ma'am?

10          A.    Yes, sir.

11          Q.    Did you forward this -- did you forward this  
12          particular 302 onto Ms. Mitchell?

13          A.    No, sir.

14          Q.    And you say this was turned over to me?

15          A.    There were Regency tapes turned over.  I'm not  
16          exactly sure.  I would assume that if there is a video from  
17          the Regency, yes, this is one of them.

18          Q.    No, ma'am, I'm not asking about the tape, I'm  
19          asking about this document.

20          A.    No, sir, I didn't.  I already answered your  
21          question.

22          Q.    You answered it for number 35.  This is 37?

23          A.    No, sir, I didn't provide it to you.

24          Q.    Okay.  And again, it is talking about taking the  
25          tape into evidence?

1           A.    Correct.  And the police report is dated  
2           April 24th.  You wanted everything to April 19th.  The day  
3           the police report is the 24th within the day they did their  
4           investigation.

5           Q.    Well, the tape was of the 19th though, wasn't it,  
6           ma'am?

7           A.    It doesn't say that, sir, does it.

8           Q.    But I thought you erred on the side of being all  
9           inclusive?

10          A.    I was inclusive.  I used your dates, sir.  It  
11          does not say in this report that it was on April 19th the  
12          tape was taken.

13          MR. TRENTADUE:  Could you look at Defendant's  
14          Exhibit 203, ma'am.  Before we leave that, Your Honor, I  
15          would offer Exhibits 35 and 37.

16          MS. WYER:  Objection relevance, Your Honor.

17          THE COURT:  Overruled.  35 and 37 will be received.

18          (Whereupon, Plaintiff's Exhibits 35 and 37 were  
19          received into evidence.)

20          Q.    (By Mr. Trentadue)  Could we see Defendant's  
21          Exhibit 20 -- I think was it 201 is the original --  
22          Exhibit 200 was I think the original FOIA request.  If you  
23          would look at that, ma'am?

24          A.    Yes, sir.

25          Q.    200, excuse me.  And if you look at that, it is

1 dated October 12th and I am asking for, again, I would like  
2 -- also like copies of all reports including 302s that  
3 describe and/or reference the FBI's taking possession of  
4 these tapes. And that is at the last sentence in the first  
5 paragraph on Page 2. It says that, doesn't it, ma'am?

6 A. Yes, sir.

7 Q. And if I could see Defendant's Exhibit 2000, I  
8 think, 3 -- I mean 203, I believe that is the final request.  
9 And that is where I narrow the request to these specific  
10 buildings, and I also said I want all tapes, FBI documents  
11 currently in my possession. Anyway, I said in addition to  
12 these buildings, I wanted the tape if you had it of the  
13 Ryder Truck being delivered to the federal building and the  
14 bomb detonating three minutes and six seconds after the  
15 suspects exited the vehicle. And those were the two -- the  
16 two requests you reviewed in deciding what the scope of my  
17 FOIA request was; is that correct?

18 A. Yes, sir.

19 Q. Beg your pardon?

20 A. Yes, sir.

21 MR. TRENTADUE: Thank you very much.

22 Q. (By Mr. Trentadue) If we could go back on my  
23 screen. If you would look at Exhibit 62. Again, this  
24 document has Murrah Federal Building, surveillance cameras,  
25 cameras, video, tape, tapes, cameras, cameras, cameras,

1 surveillance, tape. This would have been another document  
2 you would have found in your text based search, wouldn't  
3 you, ma'am?

4 A. Yes, sir.

5 Q. But this wasn't turned over either, was it?

6 A. I don't know. I have to take your word for it.

7 MR. TRENTADUE: Well, the documents I was given are in  
8 Exhibit 34 and the court can look there itself. But I would  
9 offer Exhibit 62, Your Honor.

10 THE COURT: Any objection?

11 MS. WYER: Um --

12 THE WITNESS: Mr. Trentadue, can I read the document?

13 MR. TRENTADUE: Yes, you can. I don't mean to rush  
14 you through it.

15 MS. WYER: We object on grounds of relevance.

16 THE COURT: Overruled on that ground. The document is  
17 received.

18 (Whereupon, Plaintiff's Exhibit 62 was  
19 received into evidence.)

20 THE WITNESS: Okay. I have read it.

21 Q. (By Mr. Trentadue) If you look at Exhibit 60?

22 A. Yes, sir.

23 Q. In this -- this is one that talks about SA Pamela

24 A. Matson. Do you know who Pamela Matson is?

25 A. Yes, sir, I do.

1 Q. Who is Pamela A. Matson?

2 A. She was an agent with the FBI and assigned to the  
3 OKBOMB task force.

4 Q. And it says that Agent Matson reviewed the tapes  
5 for images relating to any of the main subjects in the  
6 OKBOMB investigation and sounds and images of the explosion.  
7 When you come down to Q7 it refers to the Southwest Bell  
8 Building, the Regency Tower, the Journal Record Building,  
9 and it comes back positive, correct?

10 A. Yes, sir.

11 Q. And this was a record you found, too?

12 A. Yes, I found it.

13 Q. Okay.

14 A. I didn't provide it because it is the review of  
15 the tape it is not the acquisition of the tape.

16 Q. Okay. And if we look at the next page, it says,  
17 Q77, it says that the Southwest Bell Building tested  
18 positive?

19 A. It says that it tested positive. I don't know  
20 what positive and negatives mean. I don't know what her  
21 reference is in it.

22 MR. TRENTADUE: Okay. Your Honor, we would offer --  
23 Plaintiffs would offer Exhibit 60.

24 MS. WYER: Objection, this document is not relevant to  
25 the FBI's search.

1 THE COURT: Overruled on that ground. It is received.  
2 (Whereupon, Plaintiff's Exhibit 60 was received  
3 into evidence.)

4 Q. (By Mr. Trentadue) Ma'am, if you would look at  
5 Exhibit 36. This is another report by Ms. Matson about  
6 examining the tapes for positive images of the subject or  
7 explosion?

8 A. Yes, sir.

9 Q. Again, Journal Record, positive; Southwest Bell,  
10 positive. And that wasn't given to me either, was it,  
11 ma'am?

12 A. Same reasoning, sir. It is a review of the tape.

13 MR. TRENTADUE: Okay. Your Honor, move to admit 36.

14 MS. WYER: Objection. This document is not relevant  
15 to the FBI's search.

16 THE COURT: Overruled. The document is received.  
17 (Whereupon, Plaintiff's Exhibit 36 was received  
18 into evidence.)

19 Q. (By Mr. Trentadue) Now, if you look at  
20 Exhibit 55, ma'am. Do you recognize this document?

21 A. Yes, sir.

22 Q. And it is a report of an attempt by an unknown  
23 FBI agent to sell a copy of the Murrah Building bombing tape  
24 to the media for approximately a million dollars, using  
25 surveillance tape Murrah Federal Building, Ryder Truck, and

1 this wasn't turned over to me either, was it, ma'am?

2 A. No, sir.

3 Q. Did you send this to Ms. Mitchell?

4 A. Um, no, sir.

5 Q. Well, it certainly talks about there is a  
6 possible source for locating this tape in the efforts of  
7 somebody to sell it, isn't there, ma'am?

8 MS. WYER: Objection, argumentative.

9 THE COURT: I'm sorry, what is the objection?

10 MS. WYER: Argumentative.

11 THE COURT: Sustained. You can rephrase.

12 Q. (By Mr. Trentadue) Okay. It would certainly,  
13 ma'am, be a lead as to a possible source to find out about  
14 the existence of the tape, wouldn't it, ma'am?

15 A. It could be a lead, yes, sir.

16 Q. Okay. And if you look at Exhibit 56, this is  
17 another report dated October 30th, 1995, about the efforts  
18 to track this attempt to sell the tape. And you found this  
19 document, too, didn't you, ma'am?

20 A. Yes, sir.

21 Q. And if you would look at Exhibit 57, that is --  
22 you had another report, what is the date on this one, ma'am,  
23 about the efforts that track --

24 A. It is dated November 3rd, 1995.

25 Q. Okay. And an effort to sell the tape. If you

1 look at Exhibit 58?

2 A. Yes, sir.

3 Q. That is yet another November 7th, 1995,  
4 Confidential Source Report about monitoring this effort to  
5 try to sell that tape?

6 A. Yes, sir.

7 Q. And if you look at Exhibit 65, this is yet  
8 another October 31st, 1995, report monitoring the stories  
9 the bureau suspects is coming out on the videotape being  
10 sold depicting the Murrah -- that says depicting the arrival  
11 of the Ryder Truck at the Alfred P. Murrah Building?

12 A. Yes, sir.

13 Q. And lastly 66 --

14 THE COURT: I didn't understand. Is Exhibit 65 a  
15 document that you found?

16 THE WITNESS: Yes, sir.

17 Q. (By Mr. Trentadue) And Exhibit 66 is a November  
18 6th report again monitoring the attempts to sell the  
19 videotape depicting the arrival of the Ryder Truck to the  
20 Alfred P. Murrah Building in Oklahoma City?

21 A. Yes, sir.

22 Q. So Exhibits 55, 56, 57, 58, 65, and 66 you  
23 located in your search?

24 A. Yes, sir.

25 Q. And they were culled out by you?



1 A. Yes, sir.

2 Q. Now you said --

3 THE COURT: Mr. Trentadue, you did not offer any of  
4 those documents?

5 MR. TRENTADUE: Yes, sir. I would offer them all, 55,  
6 56, 57, 58, 65, and 66.

7 THE COURT: Any objection?

8 MS. WYER: Objection on grounds that these are not  
9 relevant to the search since they're not responsive.

10 THE COURT: Overruled. Plaintiff's Exhibits 55, 56,  
11 57, 58, 65 and 66 are received.

12 (Whereupon, Plaintiff's Exhibits 55, 56, 57, 58, 65  
13 and 66 were received into evidence.)

14 Q. (By Mr. Trentadue) Ma'am, you testified that you  
15 went back and used the ACS or Automated Case Support System  
16 to do another check?

17 A. Yes, sir.

18 Q. And then in that system you used the ICM or the  
19 Investigative Case Management portion of it?

20 A. Yes, sir.

21 Q. And you didn't search the Electronic Case File,  
22 did you?

23 A. No, sir.

24 Q. And you didn't do the Universal Index, did you?

25 A. No, sir.

1           MR. TRENTADUE: May I approach the witness, Your  
2 Honor.

3           THE COURT: You may. Is this one of the documents  
4 that you found also, ma'am?

5           THE WITNESS: Probably, sir. I mean I can't remember  
6 exactly, but it would have been -- it would have hit on one  
7 of my search terms.

8           Q. (By Mr. Trentadue) It would have. And it is --  
9 it says, "telephonic contact was established with Trooper  
10 Charles J. Hanger, Oklahoma Highway Patrol via the OHP  
11 Command Post in Oklahoma City, Oklahoma. Hanger, who is  
12 assigned Badge Number 598, advised he is currently assigned  
13 to Troop K based in Pawnee, Oklahoma." Then you read the  
14 second paragraph it says, "Hanger stated he was previously  
15 interviewed at length by the Federal Bureau of  
16 Investigation, regarding his arrest of Timothy J. McVeigh on  
17 April 19, 1995, near Perry, Oklahoma. When asked about the  
18 possibility of a pickup truck traveling in tandem with  
19 the McVeigh vehicle, Hanger responded he had no recollection  
20 of any such vehicle. He did report that just prior to  
21 stopping the automobile occupied by McVeigh, he had stopped  
22 on I-35 to assist the driver of a disabled van." Last  
23 sentence, "also, when asked about the observation of an  
24 object on the ground near the stopped McVeigh vehicle  
25 automobile, Hanger was confident this was the gun he had

1 recovered from the McVeigh vehicle."

2 Now that observation, ma'am, do you know of any other  
3 source that could have come from but a videotape of the  
4 McVeigh stop and arrest?

5 MS. WYER: Objection, Your Honor. This document does  
6 not reference any tape.

7 THE COURT: Do you have a response?

8 MR. TRENTADUE: Yes, sir. It doesn't reference a tape  
9 but if we are to believe that there is no tape of the actual  
10 stop and arrest of McVeigh, then where does this observation  
11 come from of a gun on the ground by the vehicle?

12 MS. WYER: Well, Your Honor, this document is  
13 recording an interview with Mr. Hanger.

14 MR. TRENTADUE: It says also, when asked about the  
15 observation of an object on the ground near the stopped  
16 McVeigh automobile, Hanger was confident this was the gun  
17 that he had recovered from the McVeigh vehicle.

18 THE COURT: I will receive it. You can argue its  
19 significance.

20 (Whereupon, Plaintiff's Exhibit 68 was received  
21 into evidence.)

22 MR. TRENTADUE: Approach the witness, Your Honor?

23 THE COURT: You may.

24 Q. (By Mr. Trentadue) Do you recognize Exhibit 69,  
25 Ms. Vernon?

1           A.    Yes, sir.

2           Q.    And was this one of the documents that was  
3 produced in your search, not produced but discovered?

4           A.    Yes, sir.

5           Q.    And it says, second paragraph, "On April 24th,  
6 1995, at 01:00:00 hours, the FBI examined by video footage  
7 from an ATM machine located at the Regency Hotel, Oklahoma  
8 City, Oklahoma, in which the Ryder Truck used in the bombing  
9 is seen stopping in front of the Regency Hotel for 25 to  
10 30 seconds at 08:56:00 hours and then heads east.

11 Additional information indicates that a four-wheel drive  
12 vehicle had been used by the conspirators. The video shows  
13 a four-wheel drive vehicle Ford Explorer passing five  
14 seconds prior to the Ryder Truck." This wasn't produced to  
15 me, was it, ma'am?

16          A.    No, sir, it wasn't.

17          Q.    And do you know whether or not I received the  
18 videotape from the ATM machine?

19          A.    I know you received all of the Regency Hotel  
20 tapes, so it would be part of it.

21          Q.    Did you look at the tape to see?

22          A.    I have looked at the Regency tapes. It doesn't  
23 specifically say one is from the ATM machine.

24          MR. TRENTADUE: We would offer Exhibit 69, Your Honor.

25          MS. WYER: Objection, this document is not relevant to

1 the search.

2 THE COURT: Overruled. Exhibit 69 is received.

3 (Whereupon, Plaintiff's Exhibit 69 was received  
4 into evidence.)

5 Q. (By Mr. Trentadue) Finally, ma'am, if you would  
6 turn to Exhibit 45. You recognize this document, don't you?

7 A. Yes, sir.

8 Q. And it was part of the OKBOMB file?

9 A. Yes, sir.

10 Q. Do you know whether this was ever turned over to  
11 defense counsel?

12 MS. WYER: Objection, Your Honor. That is not  
13 relevant to this FOIA search.

14 MR. TRENTADUE: I will connect it up, Your Honor.

15 THE COURT: Subject to being connected, objection is  
16 overruled.

17 Q. (By Mr. Trentadue) But it is an authentic  
18 document out of the file?

19 A. Yes, sir, it is.

20 MR. TRENTADUE: No further questions, Your Honor.

21 THE COURT: Redirect.

22 **REDIRECT EXAMINATION**

23 BY MS. WYER:

24 Q. Ms. Vernon, I want to just go through some of  
25 these same documents. If we look at Plaintiff's Exhibit 35?

1           A.    Yes, ma'am.

2           Q.    Now, you were explaining why you did not consider  
3 this document responsive to the plaintiff's request; is that  
4 right?

5           A.    Yes, ma'am.

6           Q.    Could you elaborate on that?

7           A.    When I reviewed the documents, it was my  
8 understanding or review Mr. Trentadue's request, it was my  
9 understanding that he wanted the documents when the FBI put  
10 the videos into evidence. So this is Mr. Hippard providing  
11 this video to another agent. He is not the one who put it  
12 into evidence.

13          Q.    When you say put into evidence, are you saying  
14 what does that mean?

15          A.    I am saying that --

16          Q.    Collected?

17          A.    That the chain of custody for this tape would  
18 start with Mr. Legleiter, it wouldn't have started with  
19 Mr. Hippard. Because Mr. Legleiter would have physically  
20 taken it to the evidence room, did the FD-192 chain of  
21 custody, filled out the paperwork, and provided it to the  
22 evidence techs.

23          Q.    Could you look at Defendant's Exhibit 222. Do  
24 you have -- do you have those exhibits there? I'm not sure  
25 you have those.

1 A. Yeah, I do. Yes, ma'am.

2 Q. Are you able to identify whether this -- can you  
3 recognize this document as something that you did provide?

4 A. Yes, ma'am.

5 Q. And can you identify whether there is a  
6 connection between this document and Plaintiff's Exhibit 35?

7 A. It looks like Plaintiff's Exhibit 35 is where  
8 Mr. Hippard got it from Mr. Payne. And this Exhibit 222 is  
9 where Mr. Legleiter got it from Mr. Hippard. And if I --  
10 and the thing about this one that is sort of funny it says  
11 journal paper.

12 MR. TRENTADUE: Objection to the narrative, Your  
13 Honor.

14 THE WITNESS: But I'm saying this sequence of events  
15 would have been 35, 222, and then 222 would match the chain  
16 of custody for whatever 1-B this is.

17 Q. (By Ms. Wyer) And looking at your charts at  
18 Exhibit 211, can you identify whether this document --  
19 actually, let's look at the highlight. Do you have the  
20 highlighted version of 211 there which is Defendant's  
21 Exhibit 240 --

22 A. I have the highlighted one, ma'am.

23 Q. Is that Defendant's Exhibit 248?

24 A. The one I have is still 211.

25 Q. Yeah, that doesn't have it on it. Um,

1 Defendant's Exhibit 249, looking at that document, can you  
2 identify whether the plaintiff received the tape associated  
3 with Defendant's Exhibit 222 which is marked as -- let the  
4 record reflect that this document has a sub file number at  
5 the bottom D-226?

6 MR. TRENTADUE: Objection speculation, Your Honor, as  
7 to whether or not I'm confused. Maybe it is not.

8 THE COURT: I won't take judicial notice of that.  
9 Overruled.

10 THE WITNESS: I have Exhibit 211 and on the bottom of  
11 Page 4 it shows D-226 as responsive to 1B1355 which is from  
12 the Journal Record.

13 Q. (By Ms. Wyer) So the plaintiff received or you  
14 had identified 1B1355 as responsive?

15 A. Yes, ma'am.

16 Q. And you had identified D-226 as responsive?

17 A. Yes, ma'am.

18 Q. So this other document, can you identify whether  
19 that actually refers to the same tape?

20 A. It sounds like it does since the names are  
21 blacked out. In 222 I can't say specifically but that does  
22 look like Mr. Legleiter's initials on the bottom.

23 Q. Now, could we look at Plaintiff's Exhibit 37.

24 A. Yes, ma'am.

25 Q. Does this document describe the collection of a



1 tape by the FBI?

2 A. No, ma'am, it describes the collection of a tape  
3 by the Oklahoma City Police Department.

4 Q. So in your understanding of the plaintiff's  
5 request would this be covered by his request?

6 A. No, ma'am.

7 Q. And why is that?

8 A. Because the way I understood his request is when  
9 the FBI obtained the tapes and put them into evidence, this  
10 is someone else, some other agency.

11 Q. And just to clarify your understanding of the  
12 dates that the plaintiff was referring to in his request,  
13 did you understand the plaintiff to be looking for  
14 surveillance footage where the footage itself had been from  
15 April 19th?

16 A. Yes, ma'am.

17 Q. And would that include instances where the  
18 footage was not actually collected on April 19th but was not  
19 collected until some later time?

20 A. Repeat that question.

21 Q. If, for example, a building had footage that was  
22 recorded on the morning of April 19th, but the FBI did not  
23 collect that footage until April 25th or April 30th, would  
24 you still have understood that to be responsive?

25 A. Yes, ma'am.

1 Q. And could we now look at Plaintiff's Exhibit 62.  
2 And keeping that page open, could you also look at  
3 Defendant's Exhibit 221. Do you have that?

4 A. Yes, ma'am.

5 Q. Let the record reflect that Defendant's  
6 Exhibit 221 has the sub file number E-8981 at the top.  
7 Ms. Vernon, is that the same sub file number that is on the  
8 top of Plaintiff's Exhibit 62?

9 A. Yes, ma'am.

10 Q. And let the record reflect that Defendant's  
11 Exhibit 221 has a Bates stamp at the bottom right hand  
12 corner of Page 58.

13 A. Yes, ma'am.

14 Q. Looking at Defendant's Exhibit 221, does that --  
15 do you recognize that exhibit as something that you had  
16 identified as responsive to the plaintiff's request?

17 A. Yes, ma'am.

18 Q. Now, can we look at defendant's -- Plaintiff's  
19 Exhibit 60?

20 A. Yes, ma'am.

21 Q. For this, would you consider this document on  
22 Plaintiff's Exhibit 60 which has the file number at the  
23 bottom something 3396, would you consider this responsive to  
24 the plaintiff's request?

25 A. No, ma'am.

1 Q. And looking at the specific items that the  
2 plaintiff pointed out as having positive results, Q7 and  
3 Q77, could you look again at the highlighted Exhibit 211  
4 which is Defendant's Exhibit 249. Are Q7 and Q77 -- I'll  
5 wait until you find that. Are Q7 and Q77 highlighted on  
6 that document and if you look at the Line 1B22 and then  
7 1B1355?

8 A. Yes, ma'am, they are.

9 Q. So does that indicate that you had identified  
10 those as responsive to the plaintiff's request?

11 A. Yes, ma'am.

12 Q. Could we look at Plaintiff's Exhibit 36. Let the  
13 record reflect that Plaintiff's Exhibit 36 is the document  
14 with the serial number at the bottom 5112, the plaintiff  
15 again pointed out to you, um, the items identified for the  
16 results in the third column marked positive as Q77 and Q7.  
17 So, again, are those items tapes that you had identified on  
18 your chart as responsive to the plaintiff's request?

19 A. Yes, ma'am.

20 Q. And could we now look at Plaintiff's Exhibit 55.  
21 And Plaintiff's Exhibit 55 is the document with the serial  
22 number at the bottom E-8508. Looking at that document, is  
23 there any reference in this document to the FBI's collection  
24 of a tape?

25 A. No, ma'am.

1 Q. Looking at this document, does it provide any  
2 information that you would be able to use to locate any tape  
3 that you had not already found that would be responsive to  
4 the plaintiff's FOIA request?

5 A. No, ma'am.

6 Q. And why is that? Can you elaborate?

7 A. Um, all of the terms that he kept pointing out to  
8 me were terms I searched. So if this tape existed, I would  
9 have found it in my -- either my evidence database or ACS or  
10 the Zy search. This is relating to a source trying to --  
11 trying to say an agent is trying to sell the tape. I didn't  
12 think that was responsive to his request.

13 Q. And looking at Plaintiff's Exhibit 56, this is  
14 the document with the serial number on the bottom E-8507.  
15 Again, does this document contain any reference to the FBI's  
16 collection of a videotape?

17 A. No, ma'am.

18 Q. Neither does this provide any information that  
19 you could have used to do any further search that would --  
20 that you would expect to be able to find an additional tape  
21 that would match the description of the tape plaintiff is  
22 looking for?

23 A. No, ma'am, it doesn't give me any new search  
24 terms.

25 Q. Looking at Plaintiff's Exhibit 57, which is the

1 document with the serial number at the bottom E-8505, again,  
2 does this document reference the FBI's collection of a tape?

3 A. No, ma'am.

4 Q. And does it contain any search terms that you  
5 could have used that you had not already used to help you  
6 find a tape that you hadn't already found?

7 A. No, ma'am.

8 Q. And looking at Plaintiff's Exhibit 58, which is  
9 the serial identified as E-8503, does that document  
10 reference the FBI's collection of a tape?

11 A. No, ma'am.

12 Q. Does it contain any new search terms that you  
13 could have used?

14 A. No, ma'am.

15 Q. Looking at Plaintiff's Exhibit 65, Your Honor, I  
16 guess I just didn't write it down but the plaintiff --  
17 Plaintiff's Exhibit 65, which is the document with the  
18 serial number E-8506, does this document contain any  
19 reference to the FBI's collection of a tape?

20 A. No, ma'am.

21 Q. And does it contain any additional search terms  
22 that you could have used?

23 A. No, ma'am.

24 Q. And we now look at Plaintiff's Exhibit 66. Does  
25 this document contain any reference to the FBI's collection

1 of a tape?

2 A. No, ma'am.

3 Q. Does it contain any additional search terms that  
4 you could have used?

5 A. No, ma'am.

6 Q. And if you look at Plaintiff's Exhibit 68, which  
7 is the one he just handed out?

8 A. Yes, ma'am.

9 Q. Does this document contain any information that  
10 you could have used to locate an additional tape that would  
11 be -- that would match the description of the tapes  
12 plaintiff was looking for?

13 A. No, ma'am.

14 Q. Does this document, in your view, provide any  
15 indication that there was another version or other footage  
16 from Trooper Hanger's patrol car other than what the FBI  
17 provided to the plaintiff?

18 A. No, ma'am.

19 Q. If we look at exhibit -- Plaintiff's Exhibit 69,  
20 which again he just provided, what does the sub -- this  
21 document is identified at the top as sub ATF. What does  
22 that indicate?

23 A. There was a sub file that was titled ATF.

24 Q. And I am actually not sure whether this document  
25 was provided. Did you -- do you know if you considered this

1 document responsive to the plaintiff's request?

2 A. I wouldn't have because it doesn't show the  
3 acquisition of the tape. It shows the relaying of  
4 information from the morning briefing.

5 Q. Does it contain any information that you could  
6 have used to do an additional search that you had not  
7 already done to find an additional tape that you had not  
8 already found?

9 A. No, ma'am.

10 Q. Looking at Plaintiff's Exhibit 45, is this --  
11 this document on the upper left corner is labeled FD-302.  
12 Does that mean that this document is a 302?

13 A. Yes, ma'am.

14 Q. And so you had testified earlier that 302s are  
15 interview reports that -- do you recall that?

16 A. Yes, ma'am.

17 Q. And based on your understanding of what a 302 is,  
18 does the information in this document, is this information  
19 meaningful or provide any kind of a clue in your view of  
20 about where videotapes might be responsive to the  
21 plaintiff's request or --

22 A. This 302 doesn't pertain to anything about  
23 videos.

24 Q. And what would you say the significance of the  
25 information in this 302 is?

1           A.    That there was a possibility there was a sting  
2 operation and a possibility of a bomb threat.

3           Q.    Is that -- would that be a report that someone  
4 had provided that was being documented in this document?

5           A.    It looks like it was actually a person that  
6 requested their identity to be protected that provided the  
7 report.

8           Q.    And so based on your description of what a 302  
9 is, does the existence of this language in this document  
10 mean anything in regard to the accuracy of the information  
11 there?

12          A.    It is just them reporting what -- whoever the  
13 protected identity gave them.

14          MS. WYER:  No further questions.

15          MR. TRENTADUE:  I have a couple.

16          THE COURT:  Plaintiff's Exhibit 45 was not offered.  
17 Did you intend to offer that into evidence, Mr. Trentadue?

18          MR. TRENTADUE:  I have just laid the foundation for  
19 it, Your Honor, and I would offer it when I connect it up.

20          THE COURT:  All right.  Any re-cross?

21          MR. TRENTADUE:  Yes, sir.  And if I could go one or  
22 two questions beyond the scope of the examination here, I  
23 would not have to recall this witness.  It would just be a  
24 short question that I should have thought to ask in the  
25 initial rounds.



1 **RE-CROSS-EXAMINATION**

2 BY MR. TRENTADUE:

3 Q. Ma'am, I don't want to beat this into the ground,  
4 but Exhibit 200, my FOIA Request, it doesn't say documents  
5 showing the FBI placing the tapes into evidence, does it?

6 If you look at 200 it says, I would like copies of all  
7 reports including 302s that describe and reference the FBI  
8 taking possession of the videotapes, doesn't say --

9 A. Taking possession, yes.

10 Q. Okay. And if I read your interpretation of my  
11 FOIA Request that if a tape is never -- if they take  
12 possession of it but -- if they take possession of evidence  
13 and never place it into evidence then I wouldn't get a  
14 report of any documentation on that event?

15 A. Say that again, I'm sorry.

16 Q. I mean, for example, if they took a videotape,  
17 took possession of it but never logged it into evidence,  
18 then under your interpretation I would not get that  
19 documentation?

20 A. I assume so, yes.

21 Q. And you were asked about Exhibits 55, 56, 57, 58,  
22 65, 66. These all relate to that attempt, reported attempt,  
23 to sell the tape. You didn't report that to Ms. Mitchell?

24 A. No, sir, I didn't.

25 Q. Okay. But it didn't occur to you and you have to

1 admit that those reports are fairly detailed, they give  
2 names and dates and events. You didn't suggest to your  
3 superiors or anybody else that they should look into that?

4 A. I'm sure during the investigation they were  
5 looked into, but when your Freedom of Information request  
6 came in the investigation was closed.

7 MR. TRENTADUE: Now, a couple of questions I would  
8 like to go over if I could, Your Honor.

9 THE COURT: Go ahead.

10 Q. (By Mr. Trentadue) Are you familiar with what  
11 they call ELSUR?

12 A. Yes, sir.

13 Q. And that is for surveillance information and  
14 evidence?

15 A. Yes, sir.

16 Q. And if the FBI, for example, was going a  
17 surveillance on suspects, that is where that type of 302  
18 information and tapes would go, wouldn't it?

19 A. No, sir. Usually ELSUR is court ordered. They  
20 have to go and ask for the authority to do that type of  
21 surveillance.

22 Q. But I mean --

23 A. Officers just not -- it is usually court ordered.  
24 It is not just a regular surveillance.

25 Q. Okay. But even if it is court ordered, that is

1 where that documentation goes?

2 A. Yes, sir.

3 Q. And if it is a video surveillance, that would go  
4 in there, too, wouldn't it?

5 A. In a normal case. What I understand about ELSUR,  
6 I apologize I don't know much about ELSUR I don't normally  
7 do that in my job.

8 Q. Okay. But you never searched ELSUR?

9 A. No, sir, because there were no tapes in ELSUR for  
10 the Oklahoma City bombing.

11 Q. But you don't know that for a fact?

12 A. Yes, sir, I do. Because in that timeframe, ELSUR  
13 was involved in the 1-Bs. Since then, there has been a  
14 change in our policy and ELSUR has their own place for their  
15 tapes, they get a different number, a different letter type  
16 characterization.

17 Q. But you never searched ELSUR?

18 A. No sir, I didn't need to. Didn't have any.

19 MR. TRENTADUE: Thank you, Your Honor.

20 THE COURT: Thank you for your testimony. You may  
21 step down. May this witness be excused?

22 MR. TRENTADUE: Yes, sir.

23 THE COURT: You are excused. We will recess for today  
24 and plan to begin tomorrow at 8:30. Any preliminary or  
25 procedural issues we need to deal with before tomorrow?

1 MR. TRENTADUE: No, sir.

2 MS. WYER: Your Honor, I just feel that I need to  
3 raise again the issue of time. Given the length of time  
4 that the testimony is taking, um, I would just like to  
5 inquire of the court whether there is a possibility in your  
6 schedule if the testimony continues to go beyond Wednesday,  
7 would it be something that it would be possible --

8 THE COURT: We will make arrangements to accommodate  
9 the completion of the evidence this week. So if we need to  
10 go beyond Wednesday, we will.

11 MS. WYER: Thank you, Your Honor.

12 THE COURT: We will be in recess.

13 (Whereupon, the hearing concluded at 3:42 p.m.)  
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1 STATE OF UTAH )  
2 ) ss  
3 COUNTY OF SALT LAKE )  
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5 I, Laura W. Robinson, Certified Shorthand  
6 Reporter, Registered Professional Reporter and Notary Public  
7 within and for the County of Salt Lake, State of Utah, do  
8 hereby certify:

9 That the foregoing proceedings were taken before  
10 me at the time and place set forth herein and were taken  
11 down by me in shorthand and thereafter transcribed into  
12 typewriting under my direction and supervision;

13 That the foregoing pages contain a true and  
14 correct transcription of my said shorthand notes so taken.

15 In witness whereof I have subscribed my name and  
16 affixed my seal this 16th day of September, 2014.

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Laura W. Robinson  
RPR, FCRR, CSR, CP